

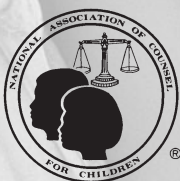
THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

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NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

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NACC Practice Tips

HOW AND WHY WE NEED TO SEE OUR CHILD CLIENTS

by Colene Flynn Robinson, NACC Program Director

Seeing child clients regularly hardly seems like a controversial idea, but the fury caused by a recent Michigan Supreme Court rule reveals the best and worst about the state of the practice for lawyers representing children. The Michigan Supreme Court recently reminded lawyers that a statute passed four years ago requires that lawyers representing child clients must see their clients once every three months or before every court hearing. Now, lawyers must submit an affidavit confirming that they have met with their clients in order to be paid for the case — but not the time or travel for visiting the child clients.

NACC member Don Duquette recently posted a newspaper article about this new rule by the Michigan court on the NACC listserv. The article quoted lawyers naming many excuses for not seeing their clients, including the fact that the children live in dangerous neighborhoods. For obvious reasons, such an excuse is shocking, but also unreflective of the practice of the vast majority of children's attorneys. In reality, while most lawyers would like to see their clients, tension exists because lawyers are not paid enough per case, forcing them to take too many cases, making it nearly impossible for them to see their clients — a self-perpetuating cycle.

There are many questions we should ask when we are challenged to do more for the children we represent. What are some of the barriers to regular client contact, and how do we remove them? Why are lawyers for children not paid to visit with their clients, when lawyers are routinely paid to see their clients in other types

of cases? How can pay be raised in these days of economic cuts, when some states are considering eliminating the child's representative altogether? Are there better ways to organize lawyers for children into more efficient delivery of legal services models? Should social workers, paralegals, or investigators be incorporated into a juvenile law practice to share some of the burden of seeing the children and conducting case investigations?

Improving our legal practice is at the forefront of the work of the NACC and our members. Both the ABA/NACC Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases and the NACC Recommendations for Representation of Children in Abuse and Neglect Cases contain clear statements about the lawyer's responsibility for meeting with the child, and the benefits that come from those meetings. The recent changes to the NACC strategic plan reemphasize how important it is to see child clients. The plan notes that youth are empowered by participating in the attorney-client relationship. Such empowerment, however, only comes if the attorney has made an effort to develop a trusting relationship with the child client.

After Professor Duquette posted the article, the listserv was alive with suggestions from members about developing and maximizing the attorney-client relationship, even when you cannot see your clients as often as you like. Jane Wells Starke, a guardian *ad litem* from New Mexico, shared these thoughts:

"I send a letter to the foster parents and children at the start of the case, explaining my role, and urging them to contact me as needed. If I am able to schedule the initial visit promptly, I hand-deliver the letter. Otherwise, I try to time the visit within a few weeks after the letter.

I urge the older kids to e-mail me if they have on-line access at school or a library and I follow-up with a very short e-mail to them to reinforce this offer. Many of the older children really enjoy this, and it gives me an opportunity to have contact with them more frequently than I can visit, and takes much less time, especially for the children in out-lying areas.

I send cards to kids for birthdays, Halloween, Christmas or appropriate winter holiday, Valentines, end of school year and start of school year, with cards with phone numbers & e-mail address. Usually several of the children call me afterwards. Once you establish a relationship with the child, you can maintain the relationship with fewer visits, which is the whole point of the cards, notes, etc.

I check with the social workers on when the children will be at the CYFD office, such as for supervised visits or semi-independent living classes, and do some of my visits there. For example, I have 8 teens in a semi-independent living class which meets monthly at a CYFD office near my office. By dropping in there for a few minutes at the end of the class, I can maintain a real relationship with the kids, and save probably 12 hours of travel time. Similarly, when I have a bunch of kids in the same school, I have periodically arranged with the school counselor to let me set up "office hours" in the school.

When I do meet with a child-client, I take a picture, which I include in my file and with my court report (and if it's a good picture, I send a copy to the child in my next card or other correspondence).

If I am unable to arrange a meeting before each court hearing, I call to ask the child if there's anything they want me to say (assuming the child is old enough to communicate well by phone and knows who I am). With older kids, encourage them to attend court, if your jurisdiction allows.

Just as [some lawyers] have children who live in unsafe urban areas, we have children in depressed rural areas with higher unemployment and drug usage rates than most inner-cities. For these, drive a junker, act like you're supposed to be there (you are), don't over dress, don't carry a briefcase and do bring a dog with you (a great ice breaker with shy kids, as well as a protection — I've had kids tell my dog things they would never tell me), and pray."

Incredible ideas, right? Don't we all wish we could be this thorough and attentive to our clients' lives? Shouldn't we be?

When I had over 100 cases in New York City, and over 200 clients, I felt like I was on top of the issues in the cases and had solid relationships with most of my clients. Now, at the NACC, I have two cases and four clients. I can devote more time to these two cases than I ever could for my 100 cases in NYC. The problem is, the more time I spend, the more I find I need to be doing — the more I see my clients, the more they trust me, the more they tell me, the more opportunities for advocacy or intervention arise. Was I only scratching the surface, treating the emergencies and doing triage when I had 100 cases? Probably. Is that where we want our field to go? Should that be our standard? Realistically,

given the financial reality of what it means to make a career of representing children, can we move forward, expecting more from ourselves and our colleagues as we develop trusting relationships with child clients? It seems difficult to advance the mission of the NACC, which is to improve the legal delivery of services to children, without struggling with these issues. With this, let us open the dialogue of other creative ways to build relationships with young clients, elevating our practice at the same time.

If you are an NACC member and would like to join the listserv, please send an email to advocate@NACCchildlaw.org, with "please add me to the listserv" in the subject line.

The Ninth Annual Rocky Mountain Child Advocacy Training Institute 2004

Presenting Evidence in Cases Involving Children

May 17–21, 2004

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 additional one-on-one video performance reviews.

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Cases

ENFORCEABLE RIGHTS OF FOSTER CHILDREN

United States District Court For Northern District Of Georgia Holds: Foster Children Are Third Party Beneficiaries Of State and Federal Contract For Funding From Social Security Act; Foster Children Have Privately Enforceable Rights Created By Federal And State Statutes; And Granted Foster Children Class Certification. Kenny A. ex rel Winn v. Perdue, 218 F.R.D. 277 (Ga. 2003).

A group of foster children in the custody of the Georgia Department of Human Services and a sub-class of African-American foster children sued to address alleged deficiencies in the Fulton and DeKalb counties' foster care systems. The federal district court denied the defendants' motions to dismiss and for a protective order, and granted the plaintiffs' motion for class certification.

Plaintiffs' asserted fifteen causes of action under federal and state laws, based on the following alleged failures: "1) assigning excessive numbers of cases to inadequately trained and poorly supervised caseworkers; 2) not developing a sufficient number of foster homes properly screened to ensure the plaintiff children's safety; 3) not identifying adult relatives who could care for plaintiff children; 4) failing to provide relevant information and support services to foster parents in order to prevent foster placements from being disrupted; 5) failing to develop administrative controls such as an information management system that ensures plaintiff children are expeditiously placed in a foster home matched to meet the children's specific needs; 6) failing to provide time and appropriate permanency planning including failing to provide services that would enable plaintiffs to achieve their permanency goals; 7) placing plaintiffs in dangerous, unsanitary, inappropriate shelters or other placements; 8) failing to

provide appropriate and necessary mental health, medical and educational services to children in their custody; and 9) separating teenage mothers in foster care from their own children and separating siblings in foster care from each other without providing visitation." 218 F.R.D. 280.

The claims for alleged violations of federal statutory and constitutional rights were brought pursuant to U.S.C. §1983. The foster children alleged violations of: the Adoption Assistance and Child Welfare Act of 1980; the Multiethnic Placement Act of 1994; the Early and Periodic Screening, Diagnosis, and Treatment Program of the Medicaid Act; the Fourteenth Amendment substantive and procedural due process clauses; and liberty, privacy and association rights under the First, Ninth and Fourteenth Amendments. The state law claims alleged violations of equal protection and substantive due process under the Georgia constitution and violations of Georgia statutes concerning ineffective and inadequate legal representation, nuisance, and breach of contract.

The federal court rejected the defendants' motion to dismiss plaintiffs' entire claim based on the doctrine of abstention. Abstention is required when a federal proceeding would interfere with ongoing state judicial proceedings that implicate important state interests and afford an adequate opportunity to raise the federal claims. The court concluded that the relief sought would not interfere with ongoing juvenile court proceedings. Furthermore, juvenile court proceedings do not provide an adequate opportunity to be heard on the federal claims, nor could a juvenile court grant relief for many of the issues presented.

Next, the court applied the Supreme Court's three-part test to determine whether the foster children have enforceable rights created under the Adoption

Act and the EPSDT program, both federal funding laws that provide money to state programs. For a federal statute to create an enforceable right: 1) Congress must have intended the provision to benefit the plaintiff; 2) the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain judicial competence, and; 3) the statute must unambiguously impose a binding obligation on the States. The court found that both statutes confer privately enforceable rights.

The plaintiffs' state claims are based on implied rights of action under Georgia statutes. Defendants argued that none of the plaintiffs' state statutory claims are cognizable under Georgia law because the statutes do not provide a basis for the claims or a private right of action. The federal court found that each count states a viable claim under Georgia law. Each of the statutes imposes specific duties on defendants intended for the benefit of children in their custody, the underlying purpose of the legislative scheme implies a private right of action for the plaintiffs, and the purpose of the statute is to protect children. Thus, it is consistent with public policy that the children who are intended to benefit from the laws should be able to sue to enforce them. The court concluded that each of plaintiffs' state based claims is viable under Georgia law. The case continues, as the defendants' motions to dismiss were denied.

AFDC-FC BENEFITS

Ninth Circuit Court Of Appeals Reverses California District Court's Decision Denying AFDC-FC Benefits To Foster Child Living With Grandmother, Finding Benefits Intended For Foster Child Living In Any AFDC-Eligible Home Prior To Removal. Rosales v. Thompson, 321 F.3d 835 (9th Cir. 2003).

A.R. was removed from his mother's home because of physical abuse. He was informally placed with his grandmother at five months old. Later, a judicial decree legally removed him from his mother's custody. A.R.'s grandmother became his official foster parent. A.R. had special needs and required repeated hospitalizations. His grandmother applied for welfare benefits for herself and A.R., and received TANF benefits for A.R. She sought Aid to Families with Dependent Children Foster Care Program (AFDC-FC) benefits to help care for his needs.

AFDC-FC benefits are available to children who are eligible for AFDC in their "home of removal." The California Department of Social Services (DSS) considered A.R.'s mother's home his "home of removal" although he was living in his grandmother's home when the petition was filed to legally remove him from his mother's home. A.R.'s mother's home was not eligible for AFDC. A.R.'s grandmother challenged this distinction in district court. The Secretary of the United States Department of Health and Human Services argued that only AFDC-eligibility in the home of removal is relevant. Although A.R. lived with his grandmother, his mother's home was still considered the "home of removal." The district court adopted the Secretary's argument. A.R.'s grandmother appealed the decision claiming that her home should be considered the "home of removal" because he lived there when the removal petition was filed, and therefore A.R. should be eligible for AFDC-FC benefits.

AFDC-FC, part of the Social Security Act, provides federal money to states that have a plan that meets the requirements of the federal statute. The AFDC-FC program provides state and federal funds for foster care maintenance payments which are distributed by state agencies. The federal statute governing AFDC-FC considers a child legally removed from his home when removal is a result of a judicial decree or a voluntary agreement. A child's "legal" home is considered to be the home of his parents, or with the adults who have legal custody of him.

On appeal, A.R.'s grandmother argued that under 42 U.S.C. §672(a), a child who was eligible for AFDC benefits while living informally in a relative's home at the time a removal petition is filed should receive foster care benefits if that home becomes

the foster child's home. The Ninth Circuit Court of Appeals concluded that the statute cannot be interpreted to prevent a child from receiving benefits who lives in an AFDC-eligible home at the time a petition removing him from an abusive or neglectful home is filed.

The court looked at legislative intent and found that the only significant issue was whether the child lived in an AFDC-eligible home at the time of removal. Whether or not that home becomes his or her foster home is irrelevant. The court stated that the Secretary's interpretation of the statute was unreasonable. It does not matter that A.R.'s mother's home was not AFDC-eligible because at the time the petition for removal was filed he lived with his grandmother. The court construed the meaning of "home of removal" to mean where the child lived when the petition for removal was filed, even if that is not the home from which he is removed. It reversed the district court's decision and remanded the matter to district court to determine the appropriate injunctive relief.

Thank you to NACC member Erik Pitchal of Children's Rights Inc., New York City, for identifying this case.

JURISDICTION OVER FOSTER TEEN'S CHILD

Florida Court Of Appeals Reverses Trial Court's Dependency Adjudication Finding It Violated Dependent Mother's Rights. J.M. v. Dep't of Child. and Family Serv., 851 So. 2d 303 (FL. 2003).

J.M., a sixteen year old dependent foster child, appealed a trial court order adjudicating her eight-month old child dependent. On appeal, J.M. argued that the trial court violated her substantive and procedural due process rights.

J.M. ran from her placement with her child, C.R. J.M.'s grandmother contacted the Department of Children and Family Services (department) notifying them that J.M. and her baby were in Virginia. J.M. contacted her Guardian *ad litem* and informed her that she and C.R. were fine. The department filed a petition for placement of C.R. in a shelter because there was "probable cause to believe that the infant child had been abused, abandoned or neglected or was in imminent danger of illness or injury as a result of the mother running away from her foster care place-

ment." The department requested that the infant child be placed in department custody after being located. The court issued a shelter order on May 15, 2002.

Next, the department filed a petition for dependency. It stated it would be unable to ensure C.R.'s protection without judicial intervention. The court conducted an arraignment hearing. The hearing was postponed because C.R.'s parents were not properly served. The department was ordered to search for them.

The court held another arraignment hearing on the department's petition for dependency. The department was still unable to find or serve the parents, and the court entered consent on their behalf by default. J.M.'s Guardian *ad litem* was present and objected to the adjudication. The court adjudicated C.R. dependent as a precautionary measure, stating that the unknown situation required declaring the child dependent so the department could act quickly if a bad situation developed. The court then held a disposition hearing and entered an order reiterating that C.R. was adjudicated dependent based on the allegations in the petition for dependency.

The court of appeals found that the trial court did not have jurisdiction over C.R. to enter its order. The department never had custody of C.R., and J.M. was not given notice or an opportunity to be heard. The court also stated that J.M. had been deprived of her due process rights because the trial court had entered an order adjudicating C.R. dependent while they were both outside of the court's jurisdiction. The court noted that the allegations in the petition for dependency were inadequate to support a finding of dependency, and that the hearsay testimony presented at trial was the only evidence that C.R. was ever at risk or suffering from neglect. The court reversed the trial court's order adjudicating C.R. dependent and remanded the case.

JUVENILE LIFE SENTENCE REVERSED

Florida Court of Appeals Reverses Juvenile's Life Sentence, Finding Trial Court Violated Juvenile's Due Process Rights By Not Conducting Pre-Trial Competency Evaluation. Tate v. Florida, 2003 Fla. App. LEXIS 1875 (FL. 2003).

Lionel Tate was twelve-years old when he killed a six-year old family friend. He was

charged with first degree murder. At trial evidence was presented that Tate had an IQ of approximately 90. A neuropsychologist testified that Tate had a mental delay of three to four years and a child psychologist testified that he functioned at the level of a six-year old. Tate was convicted and sentenced to life in prison without parole.

At the post-trial hearing, Tate's appellate counsel made an oral request for a competency evaluation and hearing. The trial court determined Tate should be evaluated by a mental health expert. After objections from the prosecution, the court reversed itself because the motion needed to be in writing. Tate's counsel then submitted a written request for a post-trial competency hearing.

Tate's appellate counsel advised the court that Tate had no interest in the proceedings, drew pictures during the hearings and was not capable of understanding what was happening. He did not interact with his lawyer, and did not understand when he rejected the plea offer that he could be sentenced to life in prison without parole. The court denied the request for a post-trial competency hearing, stating that no one previously expressed concern about Tate's competency and that Tate's disinterest in his trial did not equate to incompetency.

The court of appeals noted that competency hearings are not required strictly because the accused is a child, but determined that in light of Tate's age, experience, and mental capacity, a competency hearing was constitutionally required. The court found that the trial court's reasoning was faulty and the focus should have been on whether the defendant may be incompetent, not whether he is incompetent. The trial court had an obligation to ensure that Tate was competent to understand the plea and assist in his defense. Therefore, the court reversed the sentence and remanded the case for a new trial. The state of Florida decided not to re-try Tate and offered him the plea agreement from his original trial. Tate, now sixteen years-old, pled guilty to second degree murder and was sentenced to the three years in prison he had already served. Tate was released from prison on January 27, 2004; he will serve one year on house arrest and 10 years of probation.

JUVENILE SEX OFFENDER SENTENCE OVERTURNED

Ninth Circuit Court of Appeals Reverses District Court's Sentence of Juvenile Sex Offender Because It Was Arbitrary And Contrary To Rehabilitative Purposes Of Federal Juvenile Delinquency Act. U.S.A. v. Juvenile, 347 F.3d 778 (9th Cir. 2003).

C.K., a fourteen-year old member of the Cheyenne River Sioux Tribe, appealed a federal district court sentence imposing the maximum penalty, confining him until his twenty-first birthday. C.K. was charged with two counts of aggravated sexual assault. He pled not guilty to one count and guilty to the second. The government recommended that C.K. be required to complete sexual offender treatment and that he be committed until his eighteenth birthday. At C.K.'s sentencing hearing the district court reviewed the probation officer's pre-sentencing report and heard an apology from C.K. and his father. The district court then sentenced C.K. to confinement until his twenty-first birthday, the maximum sentence permissible under the Federal Juvenile Delinquency Act (FJDA). The sentence included eighty-one months of confinement, including eighteen months in treatment. The district court strongly recommended C.K. be placed 800 miles away from his home in a Bureau of Prisons facility.

The probation officer's pre-sentencing report detailed the events of C.K.'s childhood, including the sexual abuse he endured. C.K. was born in Montana where he lived with both parents until 1994. After his parents separated, he moved to South Dakota with his mother when he was six years old. Both of his parents accused the other of abusing him, and his paternal grandmother reported a change in his behavior when he returned from South Dakota. The Fort Belknap Tribal Counsel referred C.K. to the Fort Belknap Health Center. Over the course of three years, while C.K. was between the ages of four and seven, a boy his mother babysat for and an older cousin severely sexually abused him.

In 1996, C.K.'s father obtained custody of him and his siblings. C.K. performed well in school and his teachers reported he got along well with others. In middle school, however, he began to have behavioral problems and showed signs of post-traumatic stress disorder. In December 2000,

C.K. attempted suicide. He was treated at the hospital but no further evaluations or counseling took place. In April 2001, when C.K. was twelve years old, his school psychologist reported to the Fort Belknap Social Services allegations that C.K. had sexually abused two children at his school. The Federal Bureau of Investigations (FBI) then took over the investigation, which revealed he had inappropriately touched a girl at his school and abused one of his cousins. C.K. was charged with two counts of sexual abuse of a child.

The Ninth Circuit Court of Appeals concluded that the district court's sentence was an abuse of its discretion. Under the FJDA the purpose of sentencing juveniles is rehabilitative, by removing juveniles from the ordinary criminal justice system and providing them with appropriate treatment. The court cited the American Bar Association's Juvenile Justice Standards, which recommend, "Whenever possible, the Attorney General shall commit a juvenile to a foster home or community based-facility located in or near his home community." The court went on to emphasize that juveniles adjudged to be delinquent under the FDJA must be confined in the least-restrictive environment. The court noted that although the FDJA grants district courts discretion to select sentencing options, ultimately the sentence must adhere with the rehabilitative function of the FDJA. Thus, district courts must consider the totality of the circumstances when sentencing a juvenile. Furthermore, it should be clear in the district court's record that it considered all of the relevant factors and imposed the least restrictive means of confinement to accomplish rehabilitation of the juvenile. The court reversed the district court's decision, vacated its sentence and remanded the case for resentencing.

ADVOCATING CLIENT'S POSITION

Massachusetts Appeals Court Remands Juvenile Court Order Because Child's Attorney Did Not Present Her Wishes At Trial. Adoption of Flora, 2004 Mass. App. LEXIS 38 (MA. 2004).

This matter came before the Massachusetts Court of Appeals on appeals by Flora's mother and Flora from decrees terminating the mother's parental rights. The court rejected the mother's claims and turned to Flora's claims regarding

termination of her mother's parental rights and post-termination visits between Flora and her mother:

Flora, who is twelve years-old, appealed on grounds that the department failed to prepare an adoption plan for her and the trial judge failed to address her interest in on-going contact with her mother. The court stated that Flora's interests are paramount to her mother's, and remanded the case to determine if it was in Flora's best interest to terminate parental rights and whether post-termination visitations should be ordered.

Flora had been in foster care for almost fifteen months at the time of termination. Massachusetts General Laws require the department to file a petition to "dispense with parental consent to adoption...[if] the child has been in foster care in the custody of the state for 15 of the immediately preceding 22 months." Flora's mother had a long history of substance abuse. She was involved with the department for a number of years prior to termination. She consistently put her desire for drugs ahead of the needs of her children and failed to comply with treatment plans. The judge's finding of unfitness was based on clear and convincing evidence that Flora's mother was unable to provide minimally acceptable care for her:

At trial, Flora was represented by state appointed public counsel. Her attorney, however, failed to advocate for her wishes at trial. The court noted he may not have been aware of a relatively new requirement that he follow the 1999 Standards for Public Counsel Services. The relevant Standards require that counsel elicit the child's preferences in a developmentally appropriate way. Furthermore, if counsel determines a child is able to make an adequately considered decision in connection with the matter, counsel should present the child's expressed preferences. During the trial, Flora's counsel never informed the judge of her express desire to maintain visitation with her mother, nor did he refer to the bond between Flora and her mother. There was evidence of Flora's attachment to her mother, but it was buried in "voluminous" reports from the department and the court's investigator. Furthermore, Massachusetts General Law requires written consent of a child over the age of twelve for a decree of adoption to be made.

The court affirmed the juvenile court's finding that Flora's mother was an unfit parent. The termination of Flora's mother's parental rights and the issue of visitation were remanded to juvenile court to take into consideration Flora's wishes in determining what is in her best interests.

Thank you to NACC member Susan Dillard, from Committee for Public Counsel Services, Boston, MA, for identifying this case.

NO GUARDIAN FOR FETUS

Florida Court Of Appeals Affirms Trial Court's Order Denying Guardian For Incapacitated Mother's Fetus. 2004 Fla. App. LEXIS 161 (FL. 2004).

J.D.S., a 22 year-old woman suffering from severe mental retardation, cerebral palsy, autism, and seizure disorder, was raped and became pregnant while living in a group home. The Department of Children and Family Services (department) filed a petition requesting that a guardian be appointed for J.D.S., and a separate guardian for the fetus. The petition alleged J.D.S. was nonverbal, unable to make decisions, and unable to comprehend her own mental, physical, or environmental limitations. The petition also stated that J.D.S. was taking numerous medications which could be harmful to the fetus.

The trial court found that J.D.S. was incapacitated and appointed a guardian for her. It denied the department's request to appoint a guardian for the fetus. An independent attorney appealed the trial court's decision not to appoint a guardian for the fetus, arguing that J.D.S. lacked the capacity to provide prenatal care. Her motion to intervene was denied. On that same day, the court entered an order stating that J.D.S.'s guardian filed a plan with the court stating J.D.S. would not receive an abortion. The independent attorney filed an appeal of the trial court's denial of her motion to intervene. Oral arguments were heard on the appeal, and then the court was informed that J.D.S. delivered a child. The court decided to proceed, despite the appearance of mootness, determining that the issue of whether a trial court can appoint a guardian to a fetus is one of significant public importance.

The court reviewed the state's statute governing guardianship, Florida Statute §744.102. The court found that the

statute does not provide for the appointment of a guardian for a fetus, nor does it define or use the term fetus. Because the statute does not have a provision for fetuses, the protection of the statute does not extend to fetuses. The court concluded that there is no indication of legislative intent to provide guardians for fetuses in the statute. Furthermore, there is no Florida case law defining a fetus as a person, and, therefore, there is no authority to appoint a guardian to a fetus. Accordingly, the court affirmed the trial court's decision.

EXPERT EVIDENCE ON SUBDURAL HEMATOMA

Colorado Supreme Court Reinstates Trial Court's First Degree Murder Conviction, Allowing Testimony In Shaken Baby Case Regarding Amount Of Force Generally Exerted To Cause Subdural Hematoma. Colorado v. Martinez, 2003 Colo. LEXIS 566 (CO. 2003). The lower court's decision was previously reported on page 5 of the Winter 2002 issue of *The Guardian*.

In 1998 Stephen Martinez was charged with first degree murder and convicted for killing his girlfriend's four month old daughter. The child was diagnosed with shaken baby syndrome and died from a subdural hematoma. Two physicians and the coroner testified that it would take a considerable amount of force to cause the subdural hematoma, similar to the amount of force from a high-speed automobile accident or a multi-story fall.

On appeal, Martinez argued that the lower court erred by allowing testimony equating the child's injuries with those of a child involved in a high-speed automobile accident or multi-story fall. The court of appeals agreed, concluding that the expert testimony was unfairly prejudicial. Additionally, the court found that the scenario comparing the injuries to those sustained in a car accident were not probative of the mens rea necessary for a first degree murder charge. The court of appeals remanded Martinez's first degree murder conviction concluding that the expert testimony did not help the jury understand the minimum amount of force necessary to cause a subdural hematoma and was therefore unfairly prejudicial.

The Colorado Supreme Court reversed, finding there was no abuse of discretion in the trial court's decision to admit the testimony. The court agreed that the

accident scenarios were not probative of mens rea. The court, however, recognized that the accident scenario testimony was the basis for the expert's opinion that a subdural hematoma results from "massive, violent force" and therefore was helpful to the jury.

JUVENILE DEATH PENALTY

United States Supreme Court Will Hear Juvenile Death Penalty Case. Roper v. Simmons, 2004 U.S. LEXIS 836 (2004).

On January 26, 2004, the United States Supreme Court granted certiorari on a case addressing the constitutionality of the death penalty for juveniles. Christopher Simmons committed a murder in 1993 when he was seventeen years old. At the time of trial, Stanford v. Kentucky controlled. In Stanford, the Supreme

Court held there was no national consensus opposed to execution of 16 and 17 year olds. The Court had previously decided that it was cruel and unusual punishment to execute juveniles who were fifteen years old or younger at the time of their offense. Simmons argued that his age at the time of the offense was a mitigating factor, but did not argue that it barred sentencing him to the death penalty. Simmons was convicted of first-degree murder and sentenced to death.

In 2002, the Supreme Court held that there is a national consensus against executing the mentally retarded in Atkins v. Virginia. On appeal, Simmons asked the Missouri Supreme Court to reconsider his sentence in light of the Atkins decision. The Missouri Supreme Court concluded that a national consensus against executing juvenile offenders had developed since

the 1989 Stanford decision. The court noted that twelve states bar all executions, eighteen states bar juvenile executions, no state has lowered the age of execution below 18, and by case law or legislation five states have established 18 as the minimum age. Furthermore, the imposition of the death penalty on juveniles has become very unusual nationwide. The court adopted the U.S. Supreme Court's approach in the Atkins case, concluding there is now a national consensus against imposing the death penalty on defendants who were juveniles at the time of their offense. The prosecution has appealed, and the United States Supreme Court will now review the question of the juvenile death penalty for the first time since 1989. A decision from the U.S. Supreme Court is expected in 2005. The NACC plans to file an amicus curiae brief in this case.

GUARDIAN CASES — NOTICE TO READERS

Decisions reported in *The Guardian* may not be final. Case history should always be checked before relying on a case. Cases and other material reported are intended for educational purposes and should not be considered legal advice.

Cases reported in *The Guardian* are identified by NACC staff and our members. We encourage all readers to submit cases.

If you are unable to obtain the full text of a case, please contact the NACC and we will be happy to furnish NACC members with a copy at no charge.

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The NACC Youth Empowerment Column

ON OUR OWN: APARTMENT PROGRAMS HELP TEENS GET READY

by Natalie Kozakiewicz

Barbara Moore, a 19-year-old New York City chick, lives it up in her own apartment in Harlem, which she shares with a roommate. Last time I visited them, Barbara and her roommate were just chillin', eating KFC, and Barbara was rocking tight striped pants and braids. She was talking about what it was like to live in her own apartment for the first time.

Her apartment is hooked up real nice. She has PS2 (Playstation 2), cable, a phone she shares with her roommate, and Eminem pics all over her bedroom. The apartment has shiny hardwood floors, big rooms and freshly painted walls.

Barbara's life isn't bad either. She has a job working with 4th grade kids and she is also attending a college where she can get both her G.E.D. and a degree the same time — holla! Basically Barbara's trying to do her thing. She's only 19 but is becoming an independent woman.

But did you know she is one of us? I mean, Barbara is in foster care. She is part of a housing program called SILP, which stands for Supervised Independent Living Program.

REAL APARTMENTS, REAL LIFE EXPERIENCE

SILP is a national program, but sometimes it has different names in different agencies and states. It is designed to help prepare teens in care to live on their own by putting them in their own apartments. (Though most teens in SILP apartments don't have to pay any rent.)

Foster teens in SILP apartments learn important skills before they age out of care, like how to cook meals (or pick up KFC), do their own laundry, and shopping, and get along with their neighbors. If they need help or run into trouble, because they're still in foster care a social worker will come to their rescue.

THE SUPPORT OF A SOCIAL WORKER

Teens who do SILP in New York City are usually 18 and must have a job or be attending school. They share their SILP apartment with another person in the program. They get to meet their roommate ahead of time, to see if they basically get along.

A social worker checks up on them in their apartment from time to time, and they still attend independent living classes. There are general rules teens in SILP must follow, like they still have a curfew and they can't have family, friends, or a boyfriend or girlfriend live in the apartment. If they can't really manage the responsibilities of living alone — like if they go wild and have too many loud parties and the landlord complains (that happened to Barbara once) — they can be sent back to a group home or foster home.

The SILP program began when people realized that independent living classes alone can't truly prepare teens to live on their own. Too often, experts found that learning skills like cooking or shopping in a classroom just isn't enough to keep some teens from facing a lot of problems after leaving care. So someone got the bright idea to put teens in their own apartments, where they would get actual experience living on their own. If they needed help, their social worker could lend a hand.

But there aren't a lot of SILP apartments, so not everyone in foster care gets to do it. Being in SILP is a privilege, said Raqueil Shelton, Barbara's social worker. Shelton said they pick the teens they can trust the most to live alone without getting in trouble. "A lot of youth would benefit from SILP if they could take it seriously," said Shelton, "but a lot of people try to take advantage of it. SILP kids are looked upon highly at our agency. People look up to them 'cause they've shown that they're very responsible."

Barbara was one of those teens who proved herself responsible. She changed a lot during her last few years in group homes and foster homes. She stopped partying as much, she was going to school regularly, and in the group home she kept to herself instead of getting into all the drama. So Shelton let Barbara join SILP.

Barbara's glad. She really likes living in her own apartment and plans to stay there until she ages out of foster care.

The best thing about living in SILP, Barbara said, is that she gets to be herself—she can come home and relax and eat when she wants to. She also gets privacy, which is hard to come by in a foster or group home. She feels good knowing that if something goes wrong, like if she doesn't follow the rules, she doesn't become homeless. She will just go back to a foster home.

But it's not all easy. She got in trouble with the landlord once because her friends were smoking in the hallway and being loud. Also, she sometimes has trouble paying the phone bill, and finds herself feeling lonely from time to time.

Not everyone agrees it is a good idea to put teens in care in their own apartments. Some people say the program gives teens a false idea of what it means to be independent. After all, in a SILP apartment your rent is paid for and you receive money for food. That doesn't happen when you're truly on your own.

Still, for the most part, the teens I talked to who did SILP found it useful. Princess' [another SILP participant] advice to teens preparing to live on their own is to accept help when it's offered. That's what teens living in SILP apartments are trying to do. Hopefully it'll teach them how to better help themselves when they're out on their own.

This Youth Empowerment Article is an excerpt from a longer piece published in Foster Care Youth United, a division of Youth Communication. To learn more about Foster Care Youth United, and their many publications, please visit www.youthcomm.org. Reprinted with permission from Represent. Copyright 2003 by Youth Communication, 224 West 29th St., 2nd Floor, NY, NY 10001.



Federal Policy Update *by Miriam A. Rollin, JD*

FY 2004 FUNDING, FY 2005 BUDGET PROPOSAL

On January 23 (one-third of the way into the fiscal year, which began October 1, 2003), the FY2004 appropriations bill that covers programs for children, youth and families (and most of the government) was finally enacted... And just over a week later, on February 2, the President submitted his proposed FY2005 budget to Congress.

Child Welfare Programs

The final FY2004 spending bill adopted the President's FY04 budget proposals to level-fund most child welfare programs, although the bill failed to include the two child welfare increases that the President had proposed: the bill failed to include any of the proposed \$101 million increase in "Promoting Safe and Stable Families" (now at \$404 million) and included only \$3 million of the proposed \$18 million increase in the Independent Living vouchers for education and training (now at \$45 million). Fortunately, the final bill rejected the President's proposed 40% (\$400 million) cut in after-school program funding, but no new funds were provided to enhance the quality of local after-school activities or to reach more eligible kids.

The President's FY05 budget again proposes the full, authorized funding level for the Promoting Safe and Stable Families program (\$505 million proposed) and the Independent Living vouchers for education and training (\$60 million proposed). The budget also proposes an increase in Child Abuse Prevention and Treatment Act (CAPTA) funding from \$90 million to \$134 million.

However, the Foster Care Block Grant — the most potentially damaging proposal in many years, which had originated in the President's FY2004 proposed budget — was reiterated in the President's FY2005 budget. The proposal has not yet been introduced as a bill (so the specifics are a

bit fuzzy), but it appears to allow states to elect "fewer administrative burdens" and "flexible grants" in exchange for losing the open-ended entitlement and child protection guarantees in IV-E foster care.

Juvenile Justice and Delinquency Prevention Programs

The final FY2004 appropriations bill provided only \$80 million for Title V Delinquency Prevention funding (the President's FY04 budget had proposed only \$77 million, though that program had been previously funded at \$95 million). The final FY04 bill included only \$60 million for the Juvenile Accountability Block Grant (JABG) program (the President's FY04 budget had proposed the elimination of JABG, previously funded at \$250 million).

The President's FY05 budget is even more brutal to the juvenile justice program area, with an overall proposed cut of more than 40% in these programs from the already-reduced FY04 levels (including a \$42 million cut in Title V Prevention, and the elimination of JABG). If the President's FY05 proposals for juvenile justice and delinquency prevention are adopted by Congress, they will represent an overall funding cut of more than two-thirds in three years — an apparent trajectory towards elimination of the federal role in juvenile justice altogether — in the year that marks the 30th anniversary of the creation of that federal role in 1974.

SOCIAL SERVICES BLOCK GRANT

As reported in the last Guardian update, the Social Services Block Grant (SSBG) is the largest single source of federal support for child welfare services (bigger than "Child Welfare Services" or "Promoting Safe and Stable Families" or the "Child Abuse Prevention and Treatment Act" programs). Further, child welfare expenditures are the biggest

category of SSBG spending (other categories include child care, youth services, etc.).

Restoration of SSBG from the current level of \$1.7 billion to the previous level of \$2.8 billion is included in the federal charitable aid bill ("CARE Act", S. 476) that was approved by the Senate, by a vote of 95-5, in April 2003. In September 2003, the Ways and Means Committee and later the full House passed a charitable aid bill (H.R. 7) that fails to restore SSBG funding. The legislation is still awaiting House/Senate Conference to resolve the differences between the House- and Senate-passed bills, including the SSBG funding restoration provision.

WELFARE / CHILD CARE LEGISLATION

As noted previously in *The Guardian*, the House passed legislation to reauthorize welfare reform (TANF) and child care (CCDBG) programs (H.R. 4) in February 2003. The Senate Committee on Health, Education, Labor and Pensions (HELP) — which has jurisdiction over the discretionary CCDBG funding authorization — reported out reauthorization legislation (S. 880) in April 2003.

In September 2003, the Senate Finance Committee reported out their welfare reform bill (including mandatory child care funding). Both the Senate Committee and House-passed bills include substantial increases in work requirements for welfare recipients, but only minor increases in child care funding (not even adequate to account for inflation). Senate floor action for the Finance Committee bill (which is expected to be combined with the HELP Committee bill) may occur in late February or early March '04. When it does come to the Senate floor, there will be a bi-partisan amendment by Senators Snowe (R-ME) and Dodd (D-CT) to provide for a significant increase in mandatory child care funding — \$6 billion over five years above the level in the bill.

FAMILY OPPORTUNITY ACT

The Family Opportunity Act (S. 622) was approved by the Senate Finance Committee in September 2003 and is awaiting Senate floor action. The bill will provide assistance for states to enable adoptive parents of special needs children to purchase (on a sliding-fee scale) Medicaid health coverage. The House has not yet taken action on this legislation (H.R. 1811).

MENTALLY ILL OFFENDER TREATMENT AND CRIME REDUCTION ACT

In October 2003, the Senate Judiciary Committee approved — and the full Senate passed soon thereafter — H.R. 1194, Sen. DeWine's Mentally Ill Offender Treatment and Crime Reduction Act. The bill provides a modest new finding authorization to foster local collaborations to ensure that mental health treatment is provided in appropriate settings, thereby avoiding unnecessary and ineffective use of criminal and juvenile justice system resources.

LIFESPAN RESPITE CARE ACT

The Lifespan Respite Care Act, to assist families in accessing affordable respite care (S. 538), had passed the Senate in April 2003. The House has not yet taken action on this bill.

RELEVANT LEGISLATION WITH NO PROGRESS SINCE INTRODUCTION

- The Keeping Families Together Act [S. 1704, introduced by Sen. Collins (R-ME); and H.R. 3243, introduced by Representatives Ramstad (R-MN) and Kennedy (D-RI)], to establish a state family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to state child welfare or juvenile justice agencies for the purpose of obtaining mental health services for those children.
- The Child Protective Services Improvement Act (H.R. 1534, introduced by Representatives Miller and Cardin as an alternative to the Administration-proposed foster care block grant).
- 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 (H.R. 443, S. 331).
- Indian Child Welfare Act amendments legislation (H.R. 2750).
- The Adoption Equality Act (S. 862), to promote the adoption of children with special needs by "de-linking" their eligibility from the old AFDC (the predecessor to Welfare Reform).
- A bill to provide for the protection of unaccompanied "alien" (non-citizen) children, including ensuring access to counsel (S. 1129, introduced by Sen. Feinstein and a bi-partisan group of

cosponsors; and H.R. 3361, introduced by Rep. Lofgren and a bi-partisan group of cosponsors).

- The Child Protection and Alcohol and Drug Partnership Act (S. 614, introduced by Senators Snowe and Rockefeller).
- Several bills providing for loan forgiveness for personnel in the child welfare system (for social workers: S. 409 by Senators DeWine and Rockefeller; and House companion bill H.R. 734; for attorneys: S. 407 by Senators DeWine and Rockefeller; and for child welfare workers, certain teachers, nurses, etc.: H.R. 1306 by Rep. Miller).
- A bill (H.R. 2437, the Child Protective Services Workforce Improvement Act sponsored by Rep. Stark, inter alia) to provide grants to state child welfare systems to improve quality standards and outcomes, and to authorize loan forgiveness for certain students who choose to become child welfare workers.
- A bill (H.R. 1378) to amend Title IV-E of the Social Security Act to increase payments to states for expenditures for short-term training of staff of certain child welfare agencies.

Don't forget: you can use the web to "surf" bills, committee reports, floor debate and votes, committee assignments, etc. Just go to thomas.loc.gov and you'll find what you need! Also, the U.S. Capitol Switchboard (to contact any Senator or Representative) can be reached at 202-225-3121.

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.

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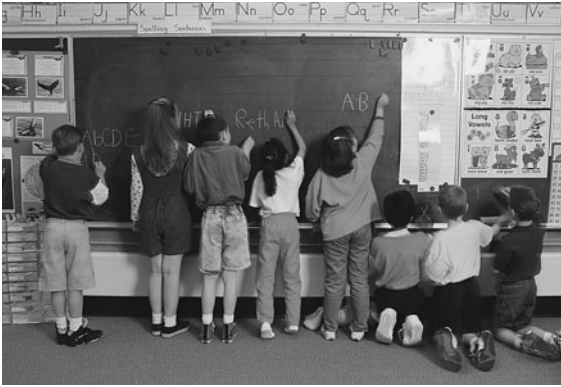
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Children's Law News

CONFERENCES & TRAINING

May 17–21, 2004

NACC 9th 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 early 2004. For more information, go to NACCchildlaw.org/training/RMCATI.html.

September 7–10, 2004

NACC 27th National Children's Law Conference, Mandalay Bay Resort, Las Vegas, NV. For more information, contact the NACC or visit NACCchildlaw.org/training/conference.html. Conference Brochures will be available in Spring, 2004.

June 3-5, 2004

ABA's 11th National Conference on Children and the Law, "Lawyers and Psychologists Working Together", Hyatt Regency Washington Hotel, Washington, D.C. This conference, for the first time, is being co-sponsored with the American Psychological Association. For the Preliminary Brochure for the conference, go to <http://www.apa.org/images/pdf/aba04.pdf>, and for a Printable Registration Form go to http://www.apa.org/images/pdf/aba04_registration.pdf.

PUBLICATIONS

Access to Justice for Children, the 2003 Edition of the NACC Children's Law Manual Series. The manual is 463 pages and includes 25 articles covering a wide range of children's legal issues including: The Development of Children's Law and Practice, Making Sensible Post-ASFA

Placement Decisions, Youth Empowerment Programs, Juvenile Competence to Stand Trial, Adoption Subsidies, International Custody, Corporal Punishment, Visitation in Dependency Cases, Preparing Caseworkers for Trial, Expert Testimony in Children's Cases, and more. Copies may be ordered from the NACC by calling toll free 1-888-828-NACC, using the Publications Order Form on the back page of this issue, or online at www.NACCchildlaw.org/trainings/manuals.html.

National Study of Child Protective Services Systems and Reform Efforts,

U.S. Department of Health and Human Services, available through the National Clearinghouse on Child Abuse and Neglect Information, <http://aspe.hhs.gov/hsp/CPS-status03/index.htm>, 800-394-3366.

Time Running Out: Teens in Foster Care,

a report from Children's Rights Inc., the Juvenile Rights Division of the Legal Aid Society, and Lawyers for Children, 212-683-2210, info@childrensrights.org.

Tough Problems, Tough Choices:

Guidelines for Needs-Based Service Planning in Child Welfare, a product of the Casey Outcomes and Decision-Making Project, distributed by the American Humane Association, 1-866-242-1877. Copies can also be downloaded from www.americanhumane.org, or www.aecf.org.

Effective Program Practices for At-Risk Youth,

by James Klopovic, Michael Vasu, and Douglas Yearwood. Civic Research Institute. 21 day review then \$125. Call 609-683-4450.

Legal Representation of Children: Recommendations and Standards of Practice for the Legal Representation

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

The Children's Legal Rights

Journal (CLRJ) is a quarterly professional practice journal for child welfare, juvenile justice, and family law professionals.

Now in its 22nd year, CLRJ is published by William S. Hein & Co., Inc., under the editorial direction of the ABA Center on Children and the Law, Loyola University of Chicago School of Law, and the National Association of Counsel for Children. CLRJ is indexed in the Current Law Index and Index to Legal Periodicals and runs approximately 60 pages per issue. The annual subscription rate is \$67 but is available to NACC members at a 30% discount (\$47 annually). To subscribe, contact Hein toll free at 1-800-828-7571, ISSN 0278-7210, or contact the NACC for more information.



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

NEWS

NACC Executive Director Receives Kempe Award. Marvin Ventrell has been named the 2004 recipient of the C. Henry Kempe Award, presented annually by the Kempe Foundation and Center to a child welfare professional whose work has advanced the field of child protection. The award will be presented at the Kempe Center Annual Gala, April 24, 2004 in Denver. Dr. Kempe was the physician and researcher who pioneered the science of child protection. The Kempe Center, where the NACC is housed, is a program of the University of Colorado Health Sciences Center and is regarded as an international leader in the research, treatment, and prevention of child maltreatment.

New NACC Staff. The NACC is pleased to announce that **Amanda George Donnelly** has joined the NACC as Staff Attorney. Mandi is a 2003 graduate of the University of Denver College of Law,

during which time she interned at the NACC. Colene Flynn Robinson continues as NACC staff in the position of Senior Staff Attorney / Program Director. Mandi will focus on the NACC Resource Center and our Attorney Certification Program. Mandi can be reached at 888-828-NACC extension 1, or by email at Donnelly.Amanda@TCHDEN.org.

New NACC Office. The NACC has moved to a larger suite at the Kempe Center in Denver: Suite 242. All other contact information remains the same.

The NACC Megan Louise Furth Youth Empowerment Fund. The fund was created to honor the life of Megan Furth by promoting the Youth Empowerment Initiative of the National Association of Counsel for Children. Megan was a remarkable young woman who died July 30, 2003 at the age of 31. The NACC Youth Empowerment Initiative was created to develop the concept of children and youth as valuable persons and citizens

with inherent legal and human rights. The NACC promotes youth participation in NACC decision-making and in the societal and governmental structures that affect young people. Youth serve on the NACC Board of Directors, teach at NACC trainings, and participate in the operation of local and national child welfare systems. The fund was created on September 1, 2003 by Megan's mother, Donna Wickham Furth, with an initial contribution of \$25,000 and a promise to match, dollar for dollar; contributions made to the fund during its first year, giving donors an opportunity to double the impact of their contributions to the NACC. Funds will be used to support youth participation in empowerment program activity including paying youth travel and lodging expenses for meetings and trainings. All contributions to the Megan Louise Furth Youth Empowerment Fund are tax deductible. Contributions can be made by check or credit card and by phone (1-888-828-NACC),

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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Mail to: NACC Membership, 1825 Marion Street, Suite 242, Denver, CO 80218

fax (303-864-5351), email (advocate@NACCchildlaw.org), or online (www.NACCchildlaw.org/about/donate.html). Make checks payable to "NACC MLF Fund!"

NACC 2004 Outstanding Legal Advocacy Award. Nominations for the 2004 award are being accepted now. The award is given annually to individuals and organizations making significant contributions to the well-being of children through legal representation and other advocacy efforts. Send nomination letter and supporting documentation to NACC Awards, 1825 Marion Street, Suite 242, Denver, CO 80218. Contact the NACC for more information. The deadline is July 1, 2004. See ad on page 14.

NACC 2004 Law Student Essay Competition. The NACC is accepting essays for the 2004 Law Student Essay Competition. The winning essay will be published in the 2004 Children's Law Manual and the winner will be given \$100, a one-year NACC membership and a scholarship to the 2004 conference in Las Vegas. Essays will be evaluated on the importance of the topic to advancing the legal interests of children, persuasiveness and quality of research and writing. Mail essays with contact information to NACC Student Essay Competition, 1825 Marion Street, Suite 242, Denver, CO 80218 by July 1, 2004. Essays should be submitted on disk together with a hard copy.

2004 NACC Outstanding Affiliate Award. Nominations are being accepted for the NACC 2004 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 242, Denver, CO 80218. Submission Deadline is July 1, 2004.

Join the NACC Children's Law Listserv Information Exchange. All NACC members are encouraged to become part of the NACC Listserv which

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

NACC Web Site / Member Directory Now Open to Public.

Visit the NACC's member services web site at www.NACCchildlaw.org. The site is comprised of four sections: *About the NACC*; *Technical Assistance and Training*; *Children and the Law*; and *Policy Advocacy*. The site includes members-only sections that allow you special access to resources. Passwords are mailed to all NACC members with their welcome packets. Contact the NACC if you don't know your password. Additionally, the NACC online membership directory, formerly a member only section, is now open to the public. Please contact the NACC if you do not want your listing made public.

The NACC National Child Advocacy Resource Center is available for member use.

The Resource Center provides referrals, resource information, and consultation. NACC members may access the resource center online (www.NACCchildlaw.org), by phone (toll-free 1-888-828-NACC), fax (303/864-5351), and e-mail (advocate@NACCchildlaw.org).

NACC Members Get Members

Program. Earn "NACC Bucks" by nominating your colleagues for membership. Participate in the NACC "Members Get Members" program and earn valuable NACC Bucks redeemable on your NACC member dues, publications, and conferences. For every prospect who becomes an NACC member, you will receive 20 NACC Bucks. Save 100 NACC Bucks and receive a complimentary registration to the NACC Annual National Children's Law Conference (a \$300 value). Complete and return the form on page 12 of this issue and start earning now.

AMICUS CURIAE ACTIVITY

Dixon v. Georgia, S 04 0072 (2004), Georgia Supreme Court. The NACC joined the Children's Defense Fund, the Child Welfare League of America, the National Center for Youth Law, and many other groups in filing an *amicus curiae* brief in this criminal statutory rape case arising from a consensual teenage sex act. Marcus, 18, was sentenced to 10 years for criminal child molestation. The amici argued that he was wrongfully convicted of child molestation based on two primary principals: (1) that the sentence represents cruel and unusual punishment under the Constitution; and (2) the sentence is not consistent with the intent of the child molestation law.

JOBS

Adoption Job Site: www.AdoptionJobSite.org — A service offered by The National Center for Adoption Law & Policy. For the fifth consecutive year, the National Center for Adoption Law & Policy will match law students from all over the U.S. who are interested in summer assignments concerning permanence for children with private, public and non-profit entities who can use their help. Since its inception, the Adoption JobSite has placed dozens of law students from many different law schools across the nation. These students have worked in courts, county children services legal departments, private adoption attorneys' offices and non-profit advocacy organizations.

Go to: www.AdoptionJobSite.org:

- to post a summer paid or volunteer position
- to learn how you can help students convert your posted volunteer position into a paid position through public interest law programs
- to get more information about the adoption jobsite

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.



National Association of Counsel for Children



2004 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 01, 2004.

Send Nominations to:

Awards Committee
 National Association of Counsel for Children
 1825 Marion Street, Suite 242
 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: _____

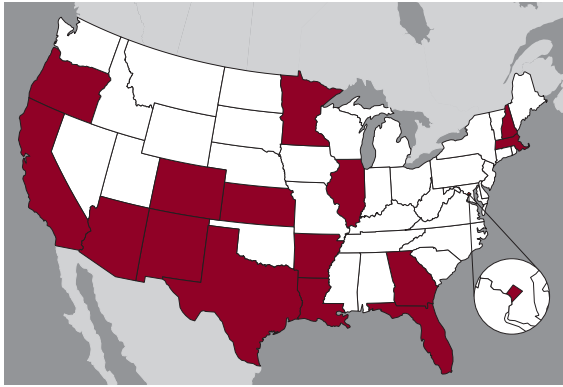
FIRM/ORGANIZATION: _____

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Affiliate News

NACC affiliates help fulfill the mission of the national association while providing members the opportunity to be more directly and effectively involved on the local level. If you are interested in participating in NACC activities on the local level, or simply want contact with other child advocates, please contact the affiliate in your area. If there is no affiliate in your area and you would be interested in forming one, please let us know. The formation of an NACC affiliate is simple, and we can provide you with an affiliate development packet to get you started. Affiliate development materials are available on our website at www.naccchildlaw.org/about/affiliates.html.

ARIZONA

Arizona Association of Counsel for Children (AACC)*

Ann M. Haralambie, President
3499 N. Campbell, #901
Tucson, AZ 85719
Phone: 602-327-6287
Fax: 520-325-1374
Email: acacnacc@aol.com
Website: members.aol.com/naccaz

ARKANSAS

Arkansas Association of Counsel for Children (AACC)*

Janet Bledsoe, President
121 N. 7th St.
Rogers, AR 72756-3742
Phone: 501-631-7136

CALIFORNIA

Northern California Association of Counsel for Children (NCACC)*

*Recipient of the NACC
Outstanding Affiliate Award (2001)*

Christopher Wu, President
AOC / Center for Children,
Families and the Courts
455 Golden Gate Avenue
San Francisco, CA 94102
Phone: 415-865-7721
Fax: 415-865-7217
Email: Christopher.Wu@jud.ca.gov

The NCACC, with the Administrative Office of the Courts, Center for Families, Children and the Courts, recently presented a training for over 150 attendees entitled "Juvenile Dependency Law: The Year in Review."

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

*Recipient of the NACC
Outstanding Affiliate Award (2001)*

Tamatha Schreiner, President
201 Centre Plaza Drive, Suite 8
Monterey Park, CA 91754
Phone: 323-980-8753
Fax: 323-980-8708
Email: schreiner@clcla.org

COLORADO

Colorado Association of Counsel for Children (CACC)*

John Ciccolella, President
405 South Cascade Avenue, Suite 205
Colorado Springs, CO 80903
Phone: 719-636-1561
Fax: 719-444-0155
Email: john@coloradofamilylaw.net

FLORIDA

Florida Association of Counsel for Children (FACC)*

David Bazerman, Interim President
Legal Aid Service of Broward County, Inc.
609 SW 1st Ave.
Fort Lauderdale, FL 33301
Phone: 954-765-8957
Email: dbazerman@legalaid.org

GEORGIA

Georgia Association of Counsel for Children (GACC)**

Dee Simms
Office of the Child Advocate
3330 Northside Drive, Suite 100
Macon, GA 31210
Phone: 478-757-2670
Fax: 478-757-2666
Email: dsimms@gachildadvocate.org

ILLINOIS

Illinois Association of Counsel for Children (IACC)*

Contact the NACC for information

KANSAS

Kansas Association of Counsel for Children (KACC)*

Larry R. Rute, President
212 SW 8th Avenue, Suite 102
Topeka, KS 66603
Phone: 785-357-1800
Fax: 785-357-0002
Email: staff@adrkscoxmail.com

LOUISIANA

NACC Student Chapter of Tulane Law School****

David Katner, Faculty Advisor
Tulane Law School
7031 Freret Street
New Orleans, LA 70118
Phone: 504-865-5153
Fax: 504-862-8753
Email: DKatner@clinic.law.tulane.edu

MASSACHUSETTS

Central & Western Massachusetts Association of Counsel for Children (CWMACC)*
Larri Tonelli Parker
490 Shrewsbury St., Suite C
Worcester, MA 01604
Phone: 508-795-0200
Fax: 508-791-0325
Email: lamparker@aol.com

MINNESOTA

Minnesota Association of Counsel for Children*
Contact the NACC for information.

NEW HAMPSHIRE

New Hampshire Chapter of the National Association of Counsel for Children (NHNACC)*
Contact the NACC for Information.

NEW MEXICO

New Mexico Association of Counsel for Children (NMACC)*
Contact the NACC for information.

OREGON

Oregon Association of Counsel for Children (OACC)*
Contact the NACC for Information

TEXAS

Central Texas Association of Counsel for Children (CTACC)*
Bree Buchanan, President
727 East Dean Keeton Street
Austin, TX 78705
Phone: 512-232-1293
Email: Bbuchanan@mail.law.utexas.edu

Houston Association of Counsel for Children / Student Chapter (HACC)****
Ellen Marrus, Faculty Advisor
University of Houston Law Center
100 Law Center
Houston, TX 77204
Phone: 713-743-0894
Email: Emarrus@uh.edu

WASHINGTON, DC

Washington, DC Metro Chapter of NACC*
Anne E. Schneiders, President
2828 Wisconsin Avenue NW, #314
Washington, DC 20007
Phone: 202-363-7916
Fax: 202-244-7693
Email: aeschild@aol.com

* Officially Chartered NACC Affiliate ** Petition for Charter Pending *** Affiliate Forming **** Student Chapter
NACC Affiliates are encouraged to send announcements and news of their activities and meetings to The Guardian.
Deadlines for submission are February 1, May 1, August 1, and November 1.

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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NACC coffee mug
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Return to: NACC, 1825 Marion Street, Suite 242, Denver CO 80218. The NACC is an IRS 501(c) 3 tax exempt organization Tax ID 84-0743810.
Contributions are tax deductible.

Thank You

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

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NACC – Publication Order Form

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Children's Law Manuals:

	Member	Non-Member
<input type="checkbox"/> Access to Justice for Children (2003)	\$29	\$35
<input type="checkbox"/> 25 Years of Child Advocacy (2002)	\$20	\$25
<input type="checkbox"/> Moving from Sympathy to Empathy (2001)	\$20	\$25
<input type="checkbox"/> Serving the Needs of the Child Client (1998)	\$20	\$25
<input type="checkbox"/> Child Advocacy at a Crossroads (1996)	\$20	\$25
<input type="checkbox"/> Children's Law, Policy & Practice (1995)	\$20	\$25
<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
<input type="checkbox"/> NACC Recommendations for Representation of Children in Abuse and Neglect Cases	\$10	\$15
<input type="checkbox"/> NACC's Better Public Policy for Children, Youth and Families: An Advocacy Guide	\$10	\$15

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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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1825 Marion Street, Suite 242
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