

NACC envisions a justice system wherein every child has his/her voice heard with the assistance of well-trained, well-resourced independent lawyers resulting in the child's rights being protected and needs being met.

President's Message

The beginning of a new year is a time when many people step back and assess where they've been and where they are going. The NACC no stranger to that process.

We have come a long way in 34 years but we still have a long way to go.



Over the past 34 years, thanks in part to NACC's advocacy, the quality and availability of legal representation for children and their families has improved throughout the country. Lawyers for children and families are better trained,

have access to better resources, and are conversant with principles drawn from the fields of medicine, psychology, social work, and other disciplines that are critical to what we do and can help achieve better outcomes for everyone involved in family-related legal proceedings. Unfortunately, there are still jurisdictions where children and their parents are still not entitled to legal representation at all or legal representation is available only in limited circumstances so we still have a long way to go.

The NACC continues to be involved in helping to shape national policy on children and families involved in the justice system. We have participated in national policy efforts on such issues as prac-

tice standards for attorneys representing parties in abuse and neglect cases and family law proceedings and reforming the ICPC. We are currently participating in the National Quality Improvement Center on Child Representation sponsored by the Children's Bureau and based at the University of Michigan which is developing a Best Practices Model of Child Representation and training curricula for children's attorneys.

As the field of child welfare evolves and becomes increasingly sophisticated and complex, child welfare policy is also developing in appellate courts nationwide. The NACC regularly files or joins in *amicus curiae* briefs in cases concerning important issues affecting children and families. Just recently, the NACC participated as an *amicus curiae* in a New Hampshire Supreme Court case challenging that state legislature's elimination of funding for parents' counsel in child welfare cases, a New Jersey Supreme Court concerning prosecutorial discretion to prosecute a child as an adult, and a United States Supreme **See President, page 2 »**

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NACC Executive Committee 2012-2014

President	Jan Sherwood
Vice President	Gerry Glynn
Treasurer	H.D. Kirkpatrick
Secretary	Erik Pitchal
Past Chair	Bob Fellmeth

» President from page 1

Court case considering whether sentencing juveniles to life without the possibility of parole is cruel and unusual punishment.

As you know, the NACC is a multidisciplinary organization whose membership is not just limited to lawyers. Our membership includes physicians, judges, social worker, CASAs, mental health professionals, law school professors, and policymakers. Our diversity helps inform our advocacy. It is the diversity and strength of our membership that gives the NACC the ability to participate in policy decisions on child welfare issues and the credibility that gives weight to its positions. So as we begin the new year, I want to thank you for your continuing membership in and support of the NACC and to ask you to help the NACC to continue to make a difference by encouraging your colleagues to join the NACC as well. There is strength in numbers.

Janet G Sherwood
NACC President

Thank You to Amanda Donnelly

Amanda Donnelly has resigned as Deputy Director of the NACC to join the State of Colorado Office of the Child's Representative as a staff attorney. Amanda began her career at the NACC as a legal intern in 2001. She was then hired as staff attorney upon graduating from law school. Amanda will be assisting with planning for this year's conference and plans to continue her involvement in the organization as an active member of the NACC.

Given Amanda's departure the NACC is hiring a Deputy Director.

Executive Committee News

About Jan Sherwood, President NACC Board of Directors 2012–2014

Janet Sherwood is a California attorney in private practice in the San Francisco Bay Area. Ms. Sherwood is a NACC certified Child Welfare Law Specialist (CWLS) and a certified Appellate Specialist through the State Bar of California's Board of Legal Specialization. She regularly sits as a judge *pro tempore* in dependency courts in San Francisco and Alameda Counties. Ms. Sherwood is also a consultant, trainer, and frequent speaker throughout the State of California on juvenile dependency issues.

Before entering private practice in 1991, Ms. Sherwood served as attorney for the California Department of Social Services for two years and a Deputy Attorney General for the State of California for eleven years. She now limits her practice to appellate representation in juvenile dependency issues. In the past, she represented children in the Marin County Juvenile Court for ten years. She has also represented parents and caregivers at the trial court level.

Ms. Sherwood is the Vice-Chair of the Board of Directors of the National Association of Counsel for Children and is the Treasurer of Board of the Northern California Association of Counsel for Children. She is a founder, Board President, and Training Director for Advokids, a California nonprofit organization that provides legal resources and education for those who advocate on behalf of children in foster care.

Ms. Sherwood is the author of *California Juvenile Dependency Case Law Updates, 1991-2010*, a compendium of California appellate decisions on juvenile dependency law. She is also the author of *Representing the Child in Abuse & Neglect Cases*, 31 ABA Family Advocate 28 (Winter 2009), co-author of *Successful Appeals: Different Appellate Approaches to Children's Continuously Changing Circumstances*, 2009 NACC Children's Law Manual Series 69, and author of the chapter on representing children in *California Juvenile Dependency Practice* (Cal. Cont. Ed. of the Bar, 2010 ed.).

Welcome NACC Secretary, Erik Pitchal

Erik Pitchal has had a varied career in and around the law, as a trial attorney, scholar, and teacher, with most of his work focused on advocacy for children and their families. He has represented children in juvenile court cases, litigated federal class action civil rights cases, managed a university-based policy institute, created a law school clinical education program, and taught family law and juvenile law at several law schools. He writes, lectures, blogs, and appears on television as an expert commentator on current legal issues. Mr. Pitchal currently works as an independent consultant to child-serving non-profit organizations, offering strategic advice, professional training, and program evaluation. He received his J.D. from Yale and his B.A. in public policy from Brown. In 2005, he was named Child Advocate of the Year by the American Bar Association's Young Lawyers Division. Mr. Pitchal is a former law clerk to Judge Robert Patterson of the U.S. District Court for the Southern District of New York.



Cases

ICWA / ADOPTION

In re Welfare of Child of R.S., 2011 Minn. LEXIS 667 (Minn. Oct. 26, 2011)

The Minnesota Supreme Court considered whether ICWA provides the tribe with jurisdiction over adoptions proceedings.

R.S.'s biological parents' rights were involuntarily terminated. After the termination hearing the White Earth Band of Ojibwe, of which the child was a registered member, petitioned for transfer of the pre-adoptive placement proceedings to its tribal court. The District Court granted the tribe's motion, reasoning that although transfer of the pre-adoptive proceedings was not authorized under a literal reading of Indian Child Welfare Act (ICWA), Congress nevertheless intended to allow transfer in this situation because ICWA "as a whole" was intended to curtail state authority over Indian child custody matters.

The Court of Appeals affirmed the District Court's ruling but on different grounds. The Court of Appeals held that ICWA neither requires nor prohibits its transfer of pre-adoptive proceedings to tribal court, leaving the question to state sources of law.

Therefore the transfer of jurisdiction over the pre-adoptive placement proceeding was a procedural matter, not a matter of substantive law, meaning the Minnesota Rules of Juvenile Protection Procedure controlled over any conflicting statute.

On review, the Supreme Court of Minnesota reversed the decision and held that ICWA did not grant tribal court's jurisdiction over pre-adoptive placement or adoption proceedings. It noted that from the beginning the tribal court lacked inherent jurisdiction over the termination of parental rights proceedings because neither the child nor the child's parents are domiciled on tribal land and only one of the parents is Native American. Further, the trial court incorrectly interpreted Congressional intent to allow pre-adoptive and adoption proceedings to be transferred to the tribal court because ICWA § 1911(b) specifically excludes these proceedings. The Court cited statutory language designating what type of proceedings the Act governs. Therefore the court could not expand the plain meaning of the statutory language to include pre-adoptive and adoption proceedings. The Supreme Court also reasoned ICWA § 1911(b) requires transfer "upon the petition of either parent or the Indian custodian." Once the case has progressed to pre-adoptive or adoptive placement, however, parental rights have been terminated, and there is a lack of standing.

[▶ Read full opinion](#)

VISITATION, THERAPEUTIC

In re Brittany C., 191 Cal. App. 4th 1343; 120 Cal. Rptr. 3d 338; 2011 Cal App. LEXIS 60

Court of Appeals – California 2nd Appellate District, Division 4

The juvenile court suspended visitation and joint therapy between the parents and their children due to the children's ongoing hostility and physical resistance to attempts at establishing a familial relationship. During these visits there were frequent verbal arguments between family members. Tension escalated on several occasions and resulted in the children running away and hiding on nearby property; this required a police search and concern for the children's physical safety during future visits.

The juvenile court's decree concerning visitation parameters was pursuant to the therapist's advice after carefully observing the family's interaction and behavior both in general visits and, later, visits in therapeutic settings. The therapist advised against visitation outside of a therapeutic setting, which was shown to significantly decrease tension for the children. The parents appealed the visitation order, arguing that the juvenile court improperly delegated its authority.

The Appellate Court determined that the juvenile court did not improperly delegate authority. The visitation order was based on the therapist's advice and the children's adamant wishes. Courts are required to analyze factors beyond the wishes of a child in determining whether visitation should take place. They may suspend parents' visitation rights if they find that a child may be physically or emotionally harmed by these visits, which are in fact intended to mend and strengthen familial

relationships. The decree indicated that the parent's visitation rights would not be removed, but scheduled by an outside agency and take place in a therapeutic setting.

» [Read full opinion](#)

ABUSE, CORPORAL PUNISHMENT

Chisolm v. State, 58 So. 3d 304 (Fla. Dist. Ct. App. 1st Dist. 2011) Court of Appeal of Florida, First District

Father was charged with third-degree felony child abuse for striking his child's arms and back repeatedly with a belt containing metal studs or circles in response to the child's refusal to complete homework. Father defended his actions, stating that as a parent he has the right to administer reasonable or non-excessive corporal punishment.

The Appellate Court held that when a parent asserts the defense of corporal punishment, the offense that may be sustained directly depends upon the type of injury sustained by the child. Parental corporal punishment must be serious enough to cause injury greater than significant bruises or welts in order for it to constitute felony child abuse. However, before looking to the child's injuries, the court must determine whether the parent's actions at issue constituted reasonable corporal punishment.

The Appellate Court determined that the father's acts of repeatedly striking the child with a belt containing metal studs were not similar to a typical spanking or other acceptable form of corporal punishment. Therefore, he failed to meet the reasonableness standard required by the affirmative defense of corporal punishment and the Appellate Court affirmed his conviction.

DEPENDENCY / EMOTIONAL ABUSE

In re Daisy H., 120 Cal. Rptr. 3d 709 (Ct. App. 2011). Court of Appeal of California, Second Appellate District, Division One

In this case the court considered whether father's emotional abuse of the children's mother impacted his ability to parent. The Juvenile Court removed two children from their father's care on the basis that he posed a risk of physical and emotional harm.

On appeal, the court found no evidence that the children were at risk of intentional physical harm or had suffered physical harm from their father. Though evidence was offered indicating that father had displayed physical violence towards the mother in the past, there was no indication that this violence was ongoing, put the children at risk, or directly harmed the children.

Further, the Appellate Court found that evidence portraying father's alleged potential for emotionally harming the children was insufficient to support removing the children from his care. In order for a juvenile court to exercise jurisdiction based on emotional harm, it must show that a child is suffering or at risk of suffering severe anxiety, depression or aggression and that the parent is unable to provide care for the child. The Appellate Court determined that evidence of the father calling the mother derogatory names was insufficient for dependency jurisdiction based on emotional harm where the children reported not being afraid of their father. The Appellate Court determined that the father's alleged mental disturbances, as evidenced by these past negative acts towards his spouse, did not have a severe impact on the children's physical or emotional well-being, nor did they impact father's parenting abilities.

NOTICE TO READERS : Decisions reported herein 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. Featured cases 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.

NACC Mission

As a multidisciplinary membership organization, we work to strengthen legal advocacy for children and families by:

- Ensuring that children and families are provided with well resourced, high quality legal advocates when their rights are at stake
- Implementing best practices by providing certification, training, education, and technical assistance to promote specialized high quality legal advocacy
- Advancing systemic improvement in child-serving agencies, institutions and court systems
- Promoting a safe and nurturing childhood through legal and policy advocacy for the rights and interests of children and families



The NACC Amicus Curiae Program promotes the legal interests of children and families through the filing of *amicus curiae* (friend of the court) briefs in state and federal appellate courts. The NACC files its own briefs and participates as *co-amici* in cases of particular importance to the development of child welfare and juvenile law. In recent years, the NACC has filed briefs in numerous state appellate courts, federal courts of appeal and The Supreme Court of the United States. To view briefs or submit a request for the NACC to participate as Amicus Curiae in a case, visit the Amicus Curiae page on our web site at www.NACCchildlaw.org.

Amicus Curiae

Interest of V.A., Supreme Court of New Jersey, Docket No. 068707

The NACC signed-on to an amicus curiae brief to the New Jersey Supreme Court drafted jointly by the New Jersey Institute for Social Justice, the Juvenile Law Center of Philadelphia, Rutgers School of Law-Newark Urban Legal Clinic, and the New Jersey Association of Criminal Defense Lawyers. This case considers whether the Juvenile Court retains review authority over prosecutorial decisions to seek waiver of children from the juvenile to the criminal court, and, if so, the appropriate standard of review.

The appeal challenges the appellate division's interpretation of New Jersey statute permitting transfer of 16 and 17-year-old youth to the adult system upon motion of the prosecutor and a showing of probable cause. The amicus curiae brief presents research on the use of waiver in New Jersey demonstrating that there is great disparity among the state's counties and along racial, ethnic, and socio-economic lines. The brief argues that the appellate division erred in applying the patent and

gross abuse of discretion standard; that the state's "mandatory" waiver statute violates separation of powers and does not afford youth due process; and that waiver has disastrous consequences for youth.

› [Read the amicus curiae brief](#)

Miller v. Alabama and Jackson v. Arkansas, United States Supreme Court, Nos. 10-9646 and 10-9647

The NACC joined the Juvenile Law Center in its brief to the United States Supreme Court in the cases of *Miller v. Alabama* and *Jackson v. Arkansas*. Both cases involve juveniles sentenced to life without the possibility of parole for homicide offenses committed when they were fourteen years old. In 2010, the U.S. Supreme Court in *Graham v. Florida* held that it is unconstitutional to sentence juveniles to life without parole for non-homicide offenses. The amicus curiae brief argues life imprisonment without the possibility of parole is also unconstitutional when imposed on juveniles convicted of homicide offenses.

In *Miller v. Alabama*, Evan Miller was convicted of capital murder in the course of arson. On the same day, and without further proceedings, Evan was sentenced to a mandatory sentence of life in prison without the possibility of parole. In *Jackson v. Arkansas*, Kuntrell Jackson was convicted of

capital murder and aggravated robbery based on his participation as an accomplice to a robbery in which an older boy shot a shop attendant. Though there was no finding that Kuntrell committed the killing or had any intent or awareness that the shop attendant would be shot, he received a mandatory life without parole sentence.

This brief builds on the research findings adopted by the Court in *Roper* and *Graham* and argues that life without parole sentences are unconstitutionally disproportionate whenever they are imposed on juveniles; that mandatory juvenile life without parole sentences are unconstitutional because they give the judge no opportunity to assess the individual circumstances surrounding the offense, including the youth's culpability in light of their age and development; and that, in light of *Graham*, juvenile life without parole sentences for felony murder are particularly inappropriate as they require no finding that the juvenile killed or intended to kill. The brief also discusses youths' particular vulnerabilities in the adult criminal justice system, including the risk of wrongful convictions and the harsh conditions of confinement for youths in adult correctional facilities.

› [Read the amicus curiae brief](#)



Policy & News

Spark Action Policy Agendas 2012

Spark Action has posted a round-up of the key policies that organizations working on child and youth issues are tracking.

[View policy agendas](#)

NCSL

National Conference of State Legislatures Child Welfare Legislative Policy Newsletter, Fostering Connections Issue (Fall 2011) provides state legislation related to enacting provisions of Fostering Connections including educational stability, kinship guardianship assistance payments for children, health oversight and coordination, state option for foster children past the age 18, and sibling placements.

[Read newsletter](#)

Teen Parents in Foster Care

In this Research Brief, Child Trends draws on its in depth knowledge of adolescent reproductive health and child welfare, reviews a broad research literature, and examines analyses of primarily regional data to assess the extent to which teens in foster

care are at risk of teen pregnancy and parenting. Our goal in undertaking this work is to increase decision makers' understanding of this population of high risk youth, to inform strategies to reduce teen pregnancies in foster care, and to support teen parents living in foster care and their children.

[View brief](#)

Article: Changing the Narrative of Child Welfare by Matthew Fraidin

This post discusses children within the Foster Care System, and was adapted from an article forthcoming in Georgetown Journal of Poverty Law and Policy, Volume XIX (2011).

[Read article](#)

Lessons Learned Through Child Welfare Litigation, by Alet A. Brown

In this article, Alet Brown discusses his experiences as he transitioned into the field of child advocacy

[Read article](#)

Effective Discovery and Engagement Practices through Family Finding

Child Trends has released two briefs describing child welfare professionals' views of and experiences with the discovery and engagement processes of the family finding model:

[Read Piecing Together the Puzzle: Tips and Techniques for Effective Discovery in Family Finding](#)

[Read Bringing Family to the Table: Tips and Techniques for Effective Family Engagement](#)

Certification Update

Become a Child Welfare Law Specialist

The NACC is pleased to announce several new changes to make the Certification Application and Exam process more convenient for you.

- **The Certification Application is now available in electronic form.** [Request an application via our web site.](#)
- **NACC has launched a computer-based Certification Exam offered at ACT Centers nationwide.** With locations in every state the ACT Center network delivers computer-based testing at hundreds of sites across the country. Approximately 85% of the U.S. population lives less than an hour from an ACT Center.

These changes will permit the NACC to accept applications year-round. Once your application is approved, you will be able to schedule your own exam at a local ACT testing center.

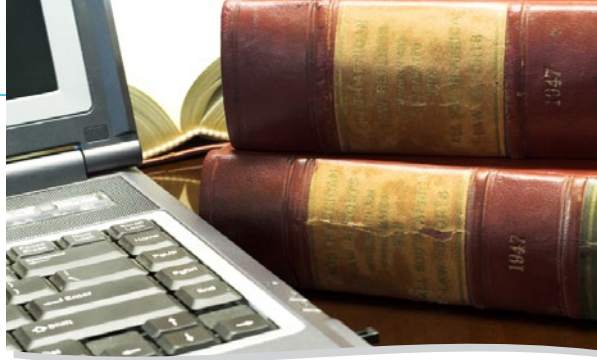
QIC Application Fee Waivers — 2012

We are pleased to announce that the QIC Child-Rep from Children's Bureau is funding an additional 200 certification applications in 2012. [Applications are being accepted now.](#)



2013 Target States

The NACC is applying to open certification in Alabama, Arizona, and Minnesota. We anticipate accepting applications as early as January 2013.



Professional Resources

BOOKS

Viewpoint: 'E.T.' Hurts Foster Kids, Should be Reheard, *The Recorder: Essential California Legal Content*, Janet G. Sherwood (10-28-11).

Commentary on the E.T. decision, which effectively bars any foster child from ever being able to file lawsuits in federal court for anything, even civil rights violations, if the defendants are state judicial branch administrators instead of state executive branch administrators.

[› Read commentary](#)

Embracing the Strengths and Overcoming the Weaknesses of Child Protection Mediation, *UC Davis Journal of Juvenile Law & Policy*, Anne E. Rosenbaum, Vol. 15:2 (298)

Across the nation, an increasing number of juvenile and family courts have started to refer their child welfare cases to the process of mediation. This paper presents a practical and critical analysis of the strengths and weaknesses of Child Protection

Mediation so that all stakeholders will better understand the process.

[› Read the full article](#)

RADIO

National Public Radio: Brain Research Fuels Rethinking Of Foster Care Services

Child advocate Gary Stangler is the executive director of the Jim Casey Youth Opportunities Initiative. He's hoping to use research about the incomplete brain development of 18-year olds to extend services for foster children up to age 21. He and guest host Tony Cox discuss how the emerging science about brain development may affect foster care. Also joining the conversation is Sixto Cancel, a college student who's been in and out of foster care since he was 11 months old.

[› Listen to the story](#)

TRAINING CALENDAR

Thursday, March 01, 2012

[› Juvenile Justice Reform - Symposium](#)

Monday, March 12 through
Wednesday, March 14, 2012

[› NITA - Deposition Skills](#)

Monday, March 19 through
Thursday, March 22, 2012

[› 28th National Symposium on Child Abuse](#)

Monday, April 16 through
Friday, April 20, 2012

[› Children's Bureau - 18th National Conference on Child Abuse and Neglect](#)

Wednesday, June 27 through
Saturday, June 30, 2012

[› American Professional Society on the Abuse of Children's 20th annual Colloquium](#)

SAVE THE DATE

Tuesday, August 14 through
Thursday, August 16, 2012

Pre-Conference August 13

[› NACC 35th National Child Welfare, Juvenile, and Family Law Conference](#)

Historic Palmer House Hilton
Downtown Chicago, IL



Thank You for Gifts Received in 2011!

\$5,000+

Anschutz Foundation
 Candace Barr
 Robert Fellmeth,
 University of San Diego
 Megan Louise Furth
 Youth Empowerment Fund
 Lea for Justice Inc.
 Robert Redfearn
 Janet Sherwood

\$1,000 – \$4,999

John Ciccolella
 Gerard Glynn
 In-N-Out Burger
 Foundation
 Katherine S. Holliday
 H.D. Kirkpatrick
 Mission & Foerster
 Foundation
 Henry Plum
 John Stuemky

\$250 – \$999

Bank of America
 Leslie Heimov
 Walter Imhoff
 Erik Pitchal
 John J. Sampson
 Jack & Joyce Sampson
 Family Foundation
 Theresa Spahn
 Shannan Wilber
 Christopher Wu

And a big thank you to Southwest, the preferred airline of NACC!

Through the generosity of Southwest Airlines, NACC has been able to develop a Member Emergency Assistance Program (MEAP). A limited number of travel vouchers are available to current NACC members for work-related travel.

› [Learn more about this exciting member benefit](#)



Attorney Spotlight

Kim Dvorchak
 EXECUTIVE DIRECTOR
 Colorado Juvenile
 Defender Coalition

Colorado has long needed an advocacy organization focused on children caught up in the juvenile justice system. Kim Dvorchak was determined to make this happen. With the support of the Criminal Defense Bar and others, Kim founded the Colorado Juvenile Defender Coalition (CJDC) and is now its first Executive Director. The Coalition began as an all volunteer organization and recently became a 501(c) 3 organization.

The CJDC was created "to elevate the quality of juvenile defense and improve the treatment of youth in Colorado's juvenile justice system. CJDC strives to elevate the practice of juvenile defense and advocacy by holding up juvenile defense as a skilled specialty practice, presenting continuing legal education seminars, developing resources and materials for juvenile defenders and advocates, and by supporting indigent defense through ongoing litigation support and assistance." Juvenile defense like Dependency and Neglect representation are specialty fields given the skills, knowledge, and expertise required to adequately represent the children involved in these systems.

Everyone who knows Kim recognizes her as a leader and a committed advocate for our most vulnerable children. In recognition of her leadership, Kim was awarded the 2009 Robert E. Shepherd Jr. Leadership Award for Excellence in Juvenile Defense by the National Juvenile Defender Center.