

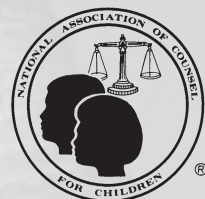
# THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

Vol. 27, No. 2 ■ Spring 2005

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## **NACC 28th National Children's Law Conference**

*State of the Art Advocacy for Children, Youth, and Families*

Renaissance Hollywood Hotel • Los Angeles, CA • August 25-28, 2005

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THE MISSION OF THE NACC IS TO:

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Improve Courts and Agencies  
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Advance the Rights  
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**THE GUARDIAN**  
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

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**Los Angeles**  
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**Renaissance Hollywood Hotel**




## 2005 National Children's Law Conference

For the first time, the NACC conference goes to Los Angeles. The conference will be held in Hollywood at the beautiful Renaissance Hollywood Hotel. A special conference room rate of \$129 single or double has been arranged for NACC conference attendees. The hotel will honor the special rate outside of the block if rooms are available. Reservations must be made by Monday, August 1, 2005 and it is anticipated that the block will sell out early. Please submit your conference registration and then make your hotel reservations ASAP to avoid a sold-out hotel. To make reservations, call 800-468-3571 and identify your

self with the National Association of Counsel for Children or NACC. [www.renaissancehollywood.com](http://www.renaissancehollywood.com)

The Renaissance Hollywood Hotel is connected to the magnificent new Hollywood and Highland shopping, dining, and entertainment complex which includes a six-screen movie theatre, the Kodak Theater (home of The Academy Awards®), five restaurants, and a wide variety of shops. The hotel is just steps from the gold-star-lined Hollywood Walk of Fame, dedicated to movie, television, and stage stars of the past and present, as well as the renowned Grauman's Chinese Theatre. And you can strike

out in style at the "club-like" Lucky Strike Lanes—the coolest bowling in LA! Start planning now for a great time in Tinseltown! [www.lacvb.com](http://www.lacvb.com)

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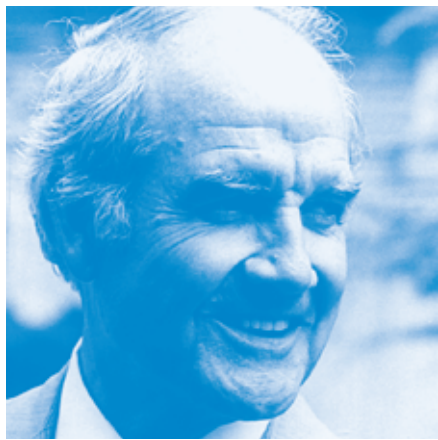
Special discounted travel for conference attendees is available from United Airlines. Please contact United Airlines: 800-521-4041 (code 529-CF). You may fly into LA International (LAX) or Burbank with this discount. ■

## Show Your Support at the McGovern Dinner Banquet

Join us for an evening of celebration on Thursday, August 25, 2005 at the Renaissance Hollywood Hotel's Grand Ballroom, home of the Academy Awards®. This spectacular banquet, presented by Wolfgang Puck Catering, will honor the work of two dedicated people and one committed law firm.

The NACC will honor Senator George McGovern with our Humanitarian Award for his tireless efforts to bring adequate food and education to many of the world's poorest children. Akin Gump Strauss Hauer & Feld LLP is the recipient of the inaugural NACC Community Service Award in honor of their

work on the Roper v. Simmons (juvenile death penalty) case in addition to their outstanding efforts on behalf of the Children's Law Center of Los Angeles. Finally, this year's NACC Outstanding Legal Advocate will also be honored at the banquet. (Winner to be announced mid-July). ■



**Celebrate these accomplishments by attending the dinner and/or buying program ad space congratulating one or all of our honorees.**

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**Event Tickets** Tickets only \$25 for NACC conference attendees.

<b>Individual</b> ..... \$ 80	<b>Gold Level*</b> Donor . . . . . \$ 125	<b>Platinum Level†</b> Donor . . . . . \$ 200
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**Please contact NACC Administrator Beth Wicht at 888-828-6222 ext. 3 or [wicht.elizabeth@tchden.org](mailto:wicht.elizabeth@tchden.org) with questions or your commitment to place an ad or purchase tickets. Ticket sales close on Friday, August 19, 2005.**

## Thurs, Aug 25, 2005

**11:00AM – 3:00PM**

**Pre-Conference**

National Children's Law Office  
Project Annual Meeting

**5:00 – 9:00PM**

**Conference Dinner Banquet**

**Keynote Address & Awards**

George McGovern

## Fri, Aug 26, 2005

**7:30AM**

**Conference Registration**

**8:00 – 9:00AM**

**New Member Orientation**

**8:30 – 9:00AM**

**Continental Breakfast**

**9:00 – 10:00AM**

**General Session I**

**Tattoos on the Heart: Strategies  
for Working with At-Risk Youth**

Father Greg Boyle, SJ

**10:00 – 10:30AM**

**Coffee Break**

**10:30AM – 12:00NOON**

**General Session II**

**NACC Child Welfare Certification**

**12:00NOON – 1:30PM**

**Luncheon 1**

**Ask the Doctor**

**1:30 – 3:00PM**

**Concurrent Session A**

- 1 : Child Development, Competence, and Credibility
- 2 : The New NCJFCJ Delinquency Court Guidelines
- 3 : Representing Children in Their Parents' Divorce Cases
- 4 : Public Spending on Children

**3:00 – 3:30PM**

**Catered Break**

**3:30 – 5:00PM**

**Concurrent Session B**

- 1 : Emerging Issues in the Institutionalization of Children in Foster Care

2 : Giving Youth a Stronger Voice

3 : Ethical Issues in the Practice of Juvenile Law

4 : Strategies for Best Practice Representation

**5:30 – 6:30PM**

**Film: *Juvies***

**7:00PM**

**Social Activity**

**Bowling at Lucky Strike Lanes**

## Sat, Aug 27, 2005

**7:30 – 8:15AM**

**Morning Exercise**

**Personal Self-Defense**

**8:30 – 9:00AM**

**Continental Breakfast**

**9:00 – 10:30AM**

**Concurrent Session C**

- 1 : Understanding the Role and Duties of Respondent Parents' Counsel
- 2 : The Role of the Attorney in Aftercare / Re-Entry Planning for the Delinquent Client
- 3 : Determining Legal Parentage in Non-Traditional Families
- 4 : Refusal of Therapy for Children

**10:30 – 11:00AM**

**Coffee Break**

**11:00AM – 12:30PM**

**Concurrent Session D**

- 1 : Training Child Welfare Professionals in Courtroom Advocacy
- 2 : Representing LGBTQ Youth
- 3 : Psychological Expertise in Custody and Visitation
- 4 : The New NCCUSL Child Representation Code

**12:30 – 2:00PM**

**Luncheon 2**

**Ask the Judge**

**2:00 – 3:30PM**

**Concurrent Session E**

- 1 : Meeting the Needs of Parenting Teens
- 2 : Crossover Youth, Part 1
- 3 : Representing Immigrant Children in the U.S. and U.S. Children Abroad
- 4 : The Y.O.U.T.H. Program

**3:30 – 4:00PM**

**Catered Break**

**4:00 – 5:30PM**

**Concurrent Session F**

- 1 : Meeting the Unique Health Care Needs of Children in Care
- 2 : Crossover Youth, Part 2
- 3 : Domestic Violence in Family and Child Welfare Courts
- 4 : Using the Courts for Systemic Reform

**BUSES DEPART AT 6:00PM**

**Off-Site Activity**

**Tour The Edelman**

**Children's Courthouse**

## Sun, Aug 28, 2005

**7:30 – 8:30AM**

**Creating and Using  
an NACC Affiliate**

**8:30 – 9:00AM**

**Continental Breakfast**

**9:00 – 10:30AM**

**Concurrent G**

- 1 : Litigating the Complex Child Abuse Case
- 2 : Restorative Justice
- 3 : State of the Art Custody Evaluations
- 4 : Youth Empowerment and Self Determination

**10:30 – 11:00AM**

**Catered Break**

**11:00AM – 12:00NOON**

**General Session III**

**2005 Juvenile Evidence Law Update**

John E.B. Myers, JD

**12:00NOON – 1:00PM**

**Closing Session**

**The State of Juvenile Law 2005**

Hon. Richard FitzGerald

**Closing Remarks,  
Door Prizes, and More**



# Registration

## The NACC 28th National Children's Law Conference

Thursday, August 25  
through Sunday, August 28

# 2005

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### Registration Includes:

All general sessions and breakouts; Children's Law Manual; breakfasts; breaks; off-site tour of The Edelman Children's Courthouse; as well as a One-Year NACC Membership for non-member registrants.

**Early Registration** — postmarked by July 25, 2005     **NACC MEMBER \$ 325**     **NON-MEMBER \$ 425**

**Regular Registration** — postmarked after July 25, 2005     **NACC MEMBER \$ 350**     **NON-MEMBER \$ 450**

Please indicate your choice for Sessions A–G by checking the track of your choice:

**Session A**  
Track: 1  2  3  4

**Session B**  
Track: 1  2  3  4

**Session C**  
Track: 1  2  3  4

**Session D**  
Track: 1  2  3  4

**Session E**  
Track: 1  2  3  4

**Session F**  
Track: 1  2  3  4

**Session G**  
Track: 1  2  3  4

**Registration Fee Enclosed** ..... \$ \_\_\_\_\_

**McGovern Dinner Banquet Thurs Evening, Aug 25**

Yes, I will attend for \$ 25 ..... \$ \_\_\_\_\_

I will bring \_\_\_\_\_ guest(s) at \$ 80 each ..... \$ \_\_\_\_\_

**Pre-Conf: Children's Law Office Project Meeting Thurs, Aug 25**

Yes, I will attend for \$ 50 ..... \$ \_\_\_\_\_

**Luncheon 1 : Ask the Doctor Fri, Aug 26**

\_\_\_\_\_ persons(s) at \$ 25 each ..... \$ \_\_\_\_\_

**Luncheon 2 : Ask the Judge Sat, Aug 27**

\_\_\_\_\_ persons(s) at \$ 25 each ..... \$ \_\_\_\_\_

**Off-Site Tour : The Edelman Children's Courthouse, and The Children's Law Center of Los Angeles Sat Evening, Aug 27**

Yes, I will attend (included in registration fee, but space is limited) ..... \$ **0.00**

**I cannot attend the conference, but wish to join the NACC**

\$ 75 ..... \$ \_\_\_\_\_

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Space at this conference is limited. Registrations are filled based on date applications are received. If you will require special assistance at the program, please contact the NACC as soon as possible.

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# Children's Rights, Inc. Joins New Mexico in Dismissing 25 Year Old Case

*by Angela Adams, JD and Tim Flynn O'Brien, JD*

On February 24, 2005, the Federal District Court for New Mexico entered a stipulated order of dismissal in the long-standing case of *Joseph A. v. N.M. Dept. of Human Services*, 575 F.Supp. 346 (1983). The case was filed in 1980 by the American Civil Liberties Union as a class action lawsuit on behalf of abused and neglected children in state custody. The suit alleged that children were languishing in foster care without adequate permanency planning. Representation of the plaintiff class was later taken over by Children's Rights, Inc.

In 1983, a consent decree was entered calling for reform of the state's child protective services system. The decree contained over 200 requirements in areas such as: social worker caseloads, training, legal representation, case planning and review, management information systems, and adoption. Most of the 1980's were spent designing a management information system, developing a training program, and putting an infrastructure in place.

In the late 1980's and 1990's, the state focused on case planning, review, and expediting permanency for children. In 1998, the Children, Youth, and Families Department (CYFD) and plaintiffs entered into a stipulated exit plan that made exit standards more objective and updated the exit standards to reflect current practice. These efforts proved indispensable when the Adoption and Safe Families Act (ASFA) was passed by Congress in 1997. Much of what had been required in the stipulated exit plan became the subject of federal law and regular monitoring.

During the 1990's, the case was dismissed twice by the federal district court. Each time, the Tenth Circuit Court of Appeals remanded the case. After a remand in 2002, the federal district court reinstated the case. The plaintiffs and the newly elected administration of Governor Bill Richardson entered into negotiations for a revised stipulated exit plan. ASFA review duplicated the revised stipulated exit plan procedural requirements for case planning. The parties had learned, however, that procedural requirements did not equate to better outcomes for children. Adoption remained the most problematic area from the original consent decree, particularly finding homes for older children, sibling groups, and children with special needs. This became the focus of

the revised stipulated exit plan, adopted by the court in November of 2003.

The revised stipulated exit plan called for Adoption Resource Teams (ART), composed of an external reviewer and a CYFD social worker, to review cases where children need adoptive placements. The ART reviewed children's cases with CYFD field staff to develop individual adoption plans to move children into adoptive homes. Individual adoption plans are created for each child with specific recommendations and due dates. Cases are re-reviewed every 60 days until the child is in an adoptive home. The innovation and urgency of this process worked for children.

In addition to implementing the ART process, the revised stipulated exit plan required the state to prove that the process was working. Children who had a plan of adoption for more than one year on December 1, 2003 and were not in an adoptive placement were identified. 203 children were identified as meeting this criterion. The exit plan required CYFD to place 40% of these children in adoptive homes prior to exit. One year later, 45% of the children were in adoptive homes. Additionally, children with a plan of adoption who were not yet legally freed were identified. The revised stipulated exit plan required that 50% of these children be freed prior to exit. As of December 31, 2004, 75% of the children identified had been legally freed for adoption.

The success of the ART process has been phenomenal. ART recommendations have included suggesting that a social worker travel to a sister state to expedite an ICPC approval, asking the state to be more active in addressing financial needs of potential adoptive parents, and advocating that social workers reconnect with relatives as potential adoptive placements. All of these efforts have paid off in terms of adoptive placements for children.

Following entry of the order of dismissal, Marcia Lowry and Susan Lambiase of Children's Rights, Inc., and local counsel, Robert Levy and Susan Conway, joined First Lady Barbara Richardson, Lieutenant Governor Diane Denish, and Cabinet Secretary Mary Dale Bolson in a celebration at the State Capitol in Santa Fe, New Mexico. ■



## Cases

### Delinquency / Juvenile Death Penalty

*United States Supreme Court Rules That The Eighth And Fourteenth Amendments Forbid Imposing Capital Punishment On Juvenile Offenders. Roper v. Simmons*, 125 S. Ct 1183 (2005).

In a 5 to 4 decision the United States Supreme Court ruled that executing offenders for crimes committed while they were juveniles violates the 14th Amendment and the 8th Amendment prohibition against cruel and unusual punishment. The Court concluded that there is a national consensus against the juvenile death penalty and that evolving standards of decency prohibit the practice.

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 U.S. Supreme Court held that there was no national consensus opposed to the execution of sixteen and seventeen-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. On the same day as the *Stanford* decision, the Court ruled in the case *Penry v. Lynaugh* that the 8th Amendment did not require a categorical exemption of mentally retarded individuals from the death penalty. At his sentencing 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, in the case *Atkins v. Virginia*, the U.S. Supreme Court held that mental retardation diminishes a person's culpability even if the defendant can tell right from wrong and concluded that there is a national consensus against executing the mentally retarded. On appeal, Simmons asked the Missouri Supreme Court to reconsider his sentence in light of the *Atkins* decision. The Missouri Supreme

Court adopted the U.S. Supreme Court's approach in the *Atkins* case, and concluded that a national consensus had developed against imposing the death penalty on defendants who were juveniles at the time of their offense. The State appealed, and the United States Supreme Court reviewed the question of the juvenile death penalty for the first time since 1989.

On writ of certiorari the U.S. Supreme Court affirmed the Missouri Supreme Court's decision. The Court turned to its findings in *Atkins* that there was a national consensus against executing the mentally retarded and that the 8th Amendment placed a substantive restriction on a state's ability to execute the mentally retarded. It applied the same consideration in *Roper*. First the Court considered whether there is a national consensus against executing juvenile offenders. It then determined whether the death penalty is a disproportionate punishment for juveniles.

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. Since the *Stanford* decision, six states have executed prisoners for crimes committed when they were juveniles. In the past ten years, only three states have executed juveniles. The Court determined therefore, that juvenile offenders are considered less culpable than adults and that there is a national consensus against the death penalty for juveniles.

Next the Court considered whether the 8th Amendment prohibits the juvenile death penalty. The Court noted that the death penalty is reserved for a narrow category of serious crimes and extremely culpable offenders. The Court recognized three general differences between juveniles and adults, demonstrated by scientific and sociological studies: 1) youth more frequently have a lack of

maturity and underdeveloped sense of responsibility; 2) juveniles are more susceptible to negative influences and peer pressure and they have less control over their own environment; 3) a juvenile's character and personality traits are not as well formed as adults. The Court previously held that there are two purposes for imposing the death penalty: retribution and deterrence. Because juveniles are less culpable, these purposes are not served by imposing the death penalty on juvenile offenders. The Court noted that the death penalty is the law's most severe punishment and should not be imposed on juveniles whose culpability is diminished. Additionally, it is unclear whether the death penalty has a deterrent effect on minors. The Court concluded therefore, that the death penalty is a disproportionate punishment for offenders under the age of 18.

In holding that the juvenile death penalty violated the 8th Amendment prohibition against cruel and unusual punishment, the Court noted that its decision is supported by the international community. The United States is the only country in the world that continued to give official sanction to the juvenile death penalty. Additionally, the United Nations Convention on the Rights of the Child, which has been ratified by every country except for the U.S. and Somalia, forbids imposing capital punishment on offenders under the age of 18. Furthermore, the U.S. is one of only seven countries that have executed juveniles since 1990.

### Enforceable Rights of Dependent Youth

*United States District Court For New Jersey Holds State Child Placement Bill Of Rights Act Creates Private Right Of Action Against State. K.J., T.J., and M.J. v. Div. of Youth and Family Servs. et al.*, 2005 U.S. Dist. LEXIS 5648 (April 6, 2005).

The plaintiffs, three adopted brothers, commenced this lawsuit in May 2004. The defendants included New Jersey Division

of Youth and Family Services (DYFS), the New Jersey Department of Human Services (DHS), present and former directors of DYFS, and individual caseworkers and supervisors of DYFS. The action was moved to the United States District Court for New Jersey on the defendants' motion to dismiss for failure to state a claim.

In October 2003, police responded to a call about a "little kid" eating out of a trashcan. When the police arrived they found B.J. He was nineteen-years old but weighed only forty-five pounds and stood four feet tall. The police then went to the Jackson home where B.J. lived with his adoptive parents. The plaintiffs, K.J., T.J., and M.J. lived there as well, all of whom appeared to be "dramatically underweight." The four children were immediately removed and taken to a local hospital.

The record revealed that DYFS had received multiple reports about the children from their schools and neighbors over the preceding ten years. Additionally, numerous physicians' reports indicated abnormal lack of growth and development for all of the children. Despite this information, B.J.'s adoption was finalized in July 1996 and M.J.'s and K.J.'s adoptions were finalized in March 1997.

DYFS records showed that DYFS caseworkers visited the Jackson home at least 38 times between 1999 and 2003 in connection with the proposed adoption of another ten-year old boy. In 1999 and 2002 DYFS re-evaluated and approved the Jackson's home for foster care. The Office of the Child Advocate (OCA) report charged DYFS with a "systematic" failure to comply with its statutory and regulatory duties as well as its own policies. DYFS had a minimum visitation requirement, which required a visit once a month. Also, DYFS regulations from 1991 through 1999 required "updated medicals and in-person interviews during re-evaluations" of a household for additional placements. When a visit was conducted, the employee reported that no one in the home had any medical problems requiring treatment. The medical history gathered by the OCA in 1997 documented specific medical concerns for each child.

Plaintiffs argued that defendants were obligated by statutes, regulations, and internal agency policies to visit and inspect the living conditions of the children. These obligations required interviewing the children in the households at various times during the foster care placement and adoption process. Plain-

tiffs alleged violations of their federal due process rights under §1983; violations of substantive due process under the New Jersey Constitution; and violations of their rights as established by the New Jersey Child Placement Bill of Rights Act. The plaintiffs sought damages against all defendants for negligence under the New Jersey Tort Claims Act and for violation of the New Jersey Law Against Discrimination. The defendants requested that the court dismiss all of the causes of action against them.

The defendants argued that the federal due process claims should be dismissed for failure to state a sufficient liberty interest and because the named officials cannot be held liable under §1983. The court disagreed. In cases where official conduct is sufficiently egregious, an official can be held accountable for his or her actions under §1983 for a violation of due process. Additionally, the court noted that the Third Circuit has held that state intervention under the surrogate care system creates a special relationship between the state and the child and sufficiently imposes on a child's liberty interest to provide a substantive due process right. The court concluded, therefore, that the plaintiffs properly alleged their substantive due process claims under §1983 and denied the defendants' motion to dismiss those claims.

The court considered the plaintiffs' allegation of violations of their rights under New Jersey law. The court looked to the Child Placement Bill of Rights Act to determine whether it provided a private cause of action for damages. The court noted that the central question when considering whether a statute creates a private right of action is determining whether the legislature intended to provide a civil remedy. The Act outlines the state's responsibilities when it places children outside of their homes. Since the Act was created outside of the existing state child welfare laws the court determined that the legislature intended it to provide a separate remedy. The court concluded that the Act was created to protect children's fundamental rights when they are placed outside of their homes and that the Act seeks to remedy harm caused when the state fails to protect the fundamental rights of children in its care. It found, therefore, that the Act provided a private right of action.

Next, the court considered whether a private right of action existed under the New Jersey constitution for a violation of

due process rights by the state government. The court explained that sovereign immunity should not apply to violations of a constitutional right because the constitution was created by the people to protect them against the state. The court concluded, however, that the plaintiffs' claims were insufficient and dismissed the claims alleging violations of the New Jersey Constitution. Additionally, the court declined to find a private right of action under other state statutes or the state Torts Claims Act.

The court concluded that the plaintiffs properly stated claims for damages under §1983, that the Child Placement Bill of Rights Act created a private right of action against the state; that the state waived sovereign immunity as to negligence claims and that the plaintiffs properly stated a negligence claim. On April 8, 2005, *The New York Times* reported that the State of New Jersey offered \$10 million to settle the lawsuit. The outcome of the settlement proceeding has not been announced.

## Dependency / Parent's Fifth Amendment Right

*Maryland Court of Appeals Holds Mother Had Fifth Amendment Right Not To Reveal Where She Last Saw Her Child. In re Ariel G.*, 858 A.2d 1007 (Oct. 5, 2004).

On writ of certiorari, the Maryland Court of Appeals affirmed the court of special appeals holding that a mother may invoke the Fifth Amendment privilege against self-incrimination in a Child in Need of Assistance (CINA) case where she had criminal charges pending against her for kidnapping her child.

The Baltimore City Department of Social Services took five-year old Ariel into protective custody from his mother, Teresa B., and filed a petition that Ariel was a Child in Need of Assistance. The petition was based on the mother's refusal to seek medical treatment for Ariel's severe asthma. The court entered an order, but before a hearing could be held, Teresa ran away with Ariel. Teresa was found and arrested three and a half years later, but she refused to disclose the location of Ariel. The court found her in contempt for refusing to disclose Ariel's whereabouts.

The court located Ariel. It found him to be a CINA and placed him in foster care. Shortly after he was placed he disappeared from his foster home. It was suspected that Teresa had fled with Ariel



again. The juvenile court held hearings where evidence was presented, that if believed, strongly indicated that Teresa took Ariel. Teresa was charged with kidnapping Ariel.

Teresa was arrested again and was incarcerated pending a bail hearing. The court, sitting as a juvenile court, questioned Teresa about the whereabouts of Ariel. Teresa refused to answer based on her Fifth Amendment privilege against self-incrimination. The court found Teresa in contempt and ordered her detained until she disclosed Ariel's location. Over the next ten months she was brought back to court for questioning, but she continued to plead the Fifth. Teresa then argued that because she had been detained for ten months she could no longer know the whereabouts of Ariel. The court then asked her about Ariel's last known location. She still refused to disclose the information. Ariel was eventually found and placed with relatives and Teresa was released from custody.

Teresa appealed court's order finding her in contempt for refusing to answer the question concerning Ariel. The intermediate appellate court reversed the decision of the juvenile court and concluded that Teresa did have a Fifth Amendment privilege to refuse to answer questions regarding her knowledge about Ariel's whereabouts. The court of special appeals concluded that the kidnapping charges pending against Teresa presented "reasonable cause to apprehend danger from a direct answer" to such questions. Baltimore City Department of Social Services (BCDSS) sought review by the court of appeals by writ of certiorari.

The question is whether the court of special appeals misconstrued *Baltimore City Department of Social Services v. Bouknight*. This case addressed whether the juvenile court can compel the parent of a child to reveal the child's whereabouts when the child is missing and has been found to be a Child in Need of Assistance. In *Bouknight*, the court concluded that the Fifth Amendment does not apply to proceedings in which the location of a child found to be a CINA is at issue.

The court held that the reasoning in *Bouknight* is different than this case. First, the contempt order was not based on Teresa's failure to produce Ariel, but upon her failure to testify about her knowledge of his whereabouts. Additionally, in *Bouknight* the mother consented to the conditions imposed by BCDSS and

subjected herself to the "routine operation of the regulatory system." In the present case, Teresa did not consent to the court's or BCDSS's jurisdiction over Ariel and never agreed to any terms that would allow her to retain any degree of lawful custody over Ariel.

The court concluded that in the present case requiring Teresa to testify about her knowledge of Ariel's whereabouts was testimonial and not a neutral act. The primary difference between *Bouknight* and the present case is that the compelled statement sought from Teresa met the threshold test for a situation where the Fifth Amendment may be invoked. The information requested was testimonial and potentially incriminating. Furthermore, Teresa did not voluntarily subject herself to the regulatory scheme of BCDSS and she obviously feared the potential use of her responses in the pending criminal proceeding. The court affirmed the court of special appeals decision.

## Dependency / Sibling Rights

*California Court Of Appeals Holds Children Have A Right To Oppose Adoption Of Siblings That Would Interfere With Sibling Relationships. In re Hector A. v. Alameda County Social Servs. Agency*, 125 Cal. App. 4th 783; 23 Cal. Rptr. 3d 104; 2005 Cal. App. LEXIS 17; 2005 Cal. Daily Op. Service 227; 2005 Daily Journal DAR 253 (January 7, 2005).

This appeal concerned the standard for determining the right of a minor to oppose a permanent plan for adoption of his or her siblings on the grounds that the adoption would substantially interfere with their sibling relationship.

This case involves six siblings. All six have a common mother but different fathers. The children were referred to the Alameda County Social Services Agency (department) after their mother left the shelter where she and her children were staying and did not return that day. Hector, the oldest, and his three youngest siblings were placed together in a foster home. Jose and his eight-year old brother were placed in separate homes because the agency could not find one home for all six siblings.

After failed attempts at reunification, the social worker filed a report that recommended terminating reunification services and setting a permanency hearing for Hector and the three youngest children because the department determined that

they could be adopted. The social worker concluded that Jose was adoptable, but he first needed further treatment. The department also believed that his eight-year old brother was adoptable, but that adoption would interfere with his sibling relationship with Jose.

Jose and his eight-year old brother petitioned the court to participate in the termination hearing as siblings of the other children. They argued that the adoption of the other four children would interfere with their sibling relationship. Additionally, they requested post-adoption visitation with their siblings. The court denied the petition and request for post-adoption visitation orders. The brothers appealed.

In making a determination of whether terminating parental rights would substantially interfere with a child's sibling relationship the court must consider: 1) whether the child was raised with a sibling in the same home, 2) whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and 3) whether ongoing contact is in the child's best interest, including the child's long term emotional best interest, as compared to the benefit of legal permanence through adoption.

The appellate court determined that Jose and his brother were entitled to participate in the termination hearing. However, the court determined that no prejudice resulted from the trial court's denial of their petition. Their siblings' foster parents, who were adopting them, had no objection to continuing the current visitation pattern. Additionally, the court noted that a final adoption order may include provisions for post-adoption visitation if the parties consent, but the validity of an adoption cannot depend on post-adoption sibling contact. The court concluded that a sibling's request to be heard should be granted if it complies with statutory requirements. In this case however, the juvenile court's failure to grant the request did not materially impact the siblings.

## Custody / Guardianship

*Nebraska Supreme Court Holds That In Guardianship Proceedings, Parental Preference Principles Create A Rebuttable Presumption That Reunification With Parent Is In Best Interest Of Child. In re Guardianship of D.J. v. Tim H. et al.*, 268 Neb. 239; 682 N.W.2d 238 (2004).

The Nebraska Supreme Court reversed the county court's decision denying the biological parent's request to terminate

the guardianship of her son. The court remanded the case with directions to terminate the guardianship and reinstate full custody to the biological mother.

In 1998, during a time of financial and emotional difficulty, Carla R. filed a petition to appoint a guardian for her son D.J. Her parents (grandparents) were appointed as guardians. Three years later Carla determined that she had achieved sufficient stability to care for D.J. She filed a petition to remove the grandparents as guardians of D.J. and terminate the guardianship. The county court found that Carla had forfeited her parental rights and concluded that it was in D.J.'s best interest to continue the guardianship. Carla appealed the decision to the Nebraska Supreme Court.

On appeal, the Nebraska Supreme Court reviewed the evidence to determine whether the county court erred in finding that Carla forfeited her parental rights and by refusing to terminate the guardianship. The court first considered the standard of proof necessary for a biological parent to terminate a guardianship. Carla argued that the parental preference principle established a rebuttable presumption that terminating a guardianship was in the best interest of the child. Conversely, the grandparents argued that the sole question was whether it is in the best interest of the child to terminate the guardianship. The court noted that in child custody disputes all decisions must be based on what is in the best interest of the child. The principle of parental preference, however, provides that a court cannot remove a child from his or her biological or adoptive parent unless it is established that the parent is unfit or forfeited his or her parental rights. The court concluded that in guardianship termination proceedings involving a biological or adoptive parent, the parental preference principle establishes a rebuttable presumption that reunification is in the best interests of her child. Therefore, the individual opposing the termination of the guardianship has the burden to prove by clear and convincing evidence that the parent is unfit or forfeited his or her right to custody.

The Nebraska Supreme Court only considered whether Carla had forfeited her right to custody, because the county court did not make a finding that Carla was an unfit parent. In Nebraska, repeated neglect of a child and failure to provide parental care and protection constitutes parental forfeiture. In this case, although Carla missed day-to-day activities in D.J.'s life,

she maintained regular contact with him. The supreme court noted that guardianships are designed to temporarily relieve parents and that it cannot be determined that a parent forfeited her right to custody based solely on a guardianship. The supreme court concluded that Carla did not forfeit her right to custody and there was no evidence that she repeatedly neglected D.J. It reversed the county court's decision and remanded the case with directions to remove the grandparents as guardians, terminate the guardianship, and reinstate in Carla the care, custody, and control of D.J.

## Custody / ICPC

*Delaware Supreme Court Holds That Interstate Compact On The Placement Of Children Applies To Non-Custodial Natural Parents.* Green et al. v. Division of Family Servs., 864 A. 2d 921; 2004 Del. LEXIS 569 (Dec. 2004).

This case came before the Delaware Supreme Court on appeal from the family court's order terminating the parental rights of the mother and two fathers of her four children. The two natural fathers petitioned the court for custody of their children. They both lived in Virginia, and the court ordered an ICPC home study. The home study evaluations were denied and their parental rights were terminated. On appeal the court upheld the termination order and concluded that the ICPC applies to non-custodial natural parents in some circumstances and that the ICPC placement requirements do not violate the natural parents' due process rights.

In 1998, the four children and their mother were first reported to the department of social services in Virginia because the children had poor school attendance, were unkempt, and had poor hygiene. The department provided services to the family and after three years prepared to remove the children from their mother's care. However, the family then moved to Delaware. In 2001, the Delaware Division of Family Services (DFS) began working with the family. DFS provided financial assistance and a Parent Aide. Despite assistance from DFS the mother failed to make progress; the children continued to miss school, they were filthy, and there was frequently no food in the home. The children were then removed from the home.

When the children were removed from their mother's care both fathers, Green

and Gelman, traveled to Delaware to attend the probable cause hearing and expressed interest in having custody of their children. Green returned to Delaware to visit his children three times in the following five months. DFS requested that Virginia conduct a home study, but neither Green nor his family complied. A Virginia case worker completed a home study for Gelman, but did not approve the placement because he had a criminal record. Gelman then moved to Delaware to try to obtain custody of his son. He entered into a case plan with DFS. He remained in Delaware for four months but was unable to find housing and returned to Virginia. In October 2003, the family court in Delaware terminated all of the parties' parental rights.

On appeal Gelman and Green contended that the ICPC should not apply to them because they are the children's natural fathers and they are not seeking placement as foster or adoptive parents. The court noted that the Third Circuit Court of Appeals decision, *McComb v. Wambaugh*, holds that the ICPC does not apply to natural parents. However, the court declined to follow *McComb*. It concluded that the ICPC should be read to encompass the placement of a dependent child with a non-custodial parent. The court relied on regulations adopted by the Association of Administrators of the ICPC. The regulations limit the ICPC's application to natural parents. It provides in part that the Compact does not apply to the sending or bringing of a child into a state by the child's parent... provided that parent is a person whose full legal right to plan for the child has been established by law prior to the placement arrangement or has not been voluntarily diminished or severed by a court. The court concluded that this provision, limiting a natural parent's right to custody, applied to Green and Gelman. Since neither father was the custodial parent their fitness was at question and therefore the same concerns that must be addressed before an out of state placement with a foster or adoptive parent applied to them. The court also noted that the fathers could have appealed the denial of the ICPC home study in Virginia and therefore their due process rights were not violated.

## Delinquency / Psychotherapist-Patient Privilege

*Oregon Court Of Appeals Holds Minor's Psychotherapy Records May Be Admit-*

*ted To Evidence When The Minor Is A Perpetrator Of Sexual Abuse. In the Matter of M.S.*, 2005 Ore. App. LEXIS 346 (March 30, 2005).

The Oregon Court of Appeals overturned the juvenile court's decision that a minor's psychotherapist-patient privilege excluded evidence of a perpetrator's records in sexual abuse cases.

M.S., a minor, lived in a foster home with the victim. The victim told his foster mother that M.S. had sexually abused him. M.S. admitted to his foster mother that he had touched the victim's "private area." The foster mother reported the alleged abuse.

M.S. began therapy at the Morrison Center. In the meantime, the state investigated the abuse and filed a delinquency petition which alleged that the acts the minor was accused of committing would constitute second degree sodomy, and first degree sexual abuse if committed by an adult. M.S. was appointed an attorney who advised the Morrison Center not to discuss the allegations in the petition any further with M.S. M.S. continued therapy at the Morrison Center.

The State subpoenaed Morrison Center for all records involving M.S. The Morrison Center refused to comply with the subpoena. The State moved for a court order requiring the Morrison Center to release all treatment records pertaining to M.S. including sex offender treatment records. The State argued that because the records pertained to a child's abuse the statutory psychotherapist-client privilege did not apply.

The juvenile court concluded that the legislature intended for the statute to abrogate the psychotherapist-patient privilege only for the child victim in a child abuse proceeding, not for the person who allegedly committed the abuse, and denied the motion. The State filed a second motion seeking clarification on the admissibility of that evidence. The juvenile court held that neither the testimony of M.S.'s treating psychotherapist nor the treatment records were admissible. The State appealed.

The parties disagreed as to whether the statute abrogates the psychotherapist-patient privilege when the person who otherwise would hold the privilege is the person accused of the abuse, rather than the victim of the abuse. The court of appeals held that the statute by its expressed terms abrogates any privileged for communications between a psycho-

therapist and a patient that regard "a child's abuse, or the cause thereof." The statute made no distinction based on whether the patient is the person who allegedly perpetrated the abuse, rather than the victim. The exception to the psychotherapist-patient privilege is based on the substance of the communication and the nature of the proceeding in which it is to be used as evidence.

The court pointed out two problems with M.S.'s argument. The first was that the statute would have to be read differently depending on which privilege is involved. The terms on which the privileged are abrogated are the same whether the privileges are, for example husband-wife privilege or the psychotherapist-patient privilege. The court stated that they are not at liberty to change those terms by reading in a limitation that does not already exist - namely that the psychotherapist-patient privilege is not abrogated in a judicial proceeding brought against a patient who would otherwise hold privilege.

Additionally, the court was not persuaded that the legislative choice to exempt a psychotherapist from reporting a patient's disclosure about engaging in possible child abuse was irreconcilable with the legislative choice to abrogate the privilege for those same communications in a child abuse prosecution. The policy choices may reflect legislative compromise or even oversight, but they are not logically inconsistent or absurd.

The minor also argued that abrogating the psychotherapist-patient privilege was poor policy because of the effect it would have on a child abuser's willingness to seek therapy. Although the court understood the concern, it concluded that it is the legislature's job to make policy choices not the court.

The court concluded that the juvenile court erred in holding that the statute is limited to privileged communication between a child abuse victim and a psychotherapist, and that the minor may not rely on the psychotherapist-patient privilege to exclude the therapist testimony presented by the state or the records of his treatment. It reversed the juvenile court's decision and remanded the case.

## **Delinquency / Right to Privacy**

*Washington Supreme Court Rules Telephone Conversation Between Juvenile*

*And His Girlfriend Was Private; Lower Court Erred In Admitting Girlfriend's Mother's Testimony About Conversation. Washington v. Christensen*, 102 P.3d 789; 2004 Wash. LEXIS 919 (December 2004).

The State of Washington Supreme Court overruled the trial and appellate courts' decisions to admit the testimony of the defendant's girlfriend's mother. Mr. Christensen, the defendant, was accused of robbery at the age of seventeen. The sheriff believed that there could be evidence at Mr. Christensen's girlfriend's home. He went to the home and met with Mrs. Dixon, the girlfriend's mother. The sheriff did not find any evidence, but asked Mrs. Dixon to keep a lookout for any evidence of the crime. Later Mr. Christensen called his girlfriend. Mrs. Dixon answered the cordless phone and gave it to her daughter. Her daughter went to her bedroom and shut the door. At that time Mrs. Dixon activated the speakerphone function on the base unit of the phone. She listened to the conversation and took notes, which she gave to the sheriff.

Mrs. Dixon was allowed to testify at Mr. Christensen's trial on the substance of the conversation she heard. The trial court ruled against the defendant's objections and concluded that Mrs. Dixon statements were not excluded as hearsay because they were direct admissions to the crime. He was convicted, based in large part on Mrs. Dixon's testimony. On appeal, the Washington Court of Appeals affirmed the trial court's decision to admit her testimony.

On review, the Washington Supreme Court reversed the lower courts' rulings and concluded that the evidence was obtained in violation of the state's privacy act. Washington law states that a conversation is private when the parties have manifested a subjective intent that it is private and that expectation is reasonable. Evidence obtained in violation of the state's privacy act is inadmissible for any purposes. In this case, Mr. Christensen and his girlfriend had a subjective intent to have a private conversation. When Mr. Christensen called the Dixon's home he asked to speak to his girlfriend. Her actions demonstrated her intent to have a private conversation; she took the phone, went into her bedroom, and shut the door. Additionally, their expectation of privacy was reasonable. The State argued that their expectation for privacy was unreasonable because they should have known someone could have listened



to their call. The court dismissed this argument and noted that the technological ability to intrude on an otherwise private activity does not take away the person's expectation for privacy.

The court also declined to adopt the State's suggestion that there should be an implied exception in the privacy act for minors because parents have an absolute right to monitor their child's telephone activities. The Washington privacy act requires all parties to consent and does not provide a parental exception. The court concluded that Mrs. Dixon's act of listening to her daughter and Mr. Christensen's conversation on the base unit of the cordless phone was an interception. The two had a reasonable expectation of privacy and the lower courts erred by admitting Mrs. Dixon's testimony about the conversation. It reversed the lower courts' decisions and remanded the case for a new trial.

## AMICUS CURIAE ACTIVITY

### In the Interest of K.M.M. Pennsylvania Supreme Court.

The NACC joined the Juvenile Law Center in filing a brief in support of W.B., a dependent youth and teen parent. Two days after W.B. gave birth to K.M.M., the department filed a dependency petition for K.M.M. Mother and child were still in the hospital and W.B. had been given no chance to parent. The petition alleged that the baby should be found dependent because W.B. was herself a dependent child and has no ability to meet the baby's needs. W.B. was not notified of the adjudication hearing nor given a copy of the dependency petition until after the hearing. At the adjudication, although W.B.'s guardian *ad litem* was in the courtroom, she was not represented by an attorney who represented her rights as a parent. In addition, no evidence was presented to support the allegation that W.B.'s baby was dependent, or that the

reasonable efforts requirement of state and federal law was met. The court found that reasonable efforts had been made to prevent placement even though W.B. and K.M.M. were still in the hospital and had been offered no services. W.B.'s guardian *ad litem* agreed to the dependency adjudication of her child without consulting with W.B. prior to the court hearing. The court relied expressly on counsel's agreement in its opinion supporting the baby's adjudication.

The amici argue that the dependency adjudication of K.M.M. violated federal and state law and that teen parents must be afforded the same statutory and constitutional rights to counsel and to zealous representation as non-minor parents. The brief states that teens are entitled to the same protections under federal and state law as adult parents and that it is established law in Pennsylvania that teen parent dependency is not grounds for a finding of dependency of the teen's child. ■

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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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# Empowering Foster Youth: Inclusion in Court Hearings and Decision-Making

by Jennifer Rodriguez, JD

NACC Board of Directors Youth Representative, Legislative & Policy Coordinator, California Youth Connection

Many people reminisce on their childhood as a time blissfully free from adult worries, painful information, and hard decisions. Growing up in foster care, I was exposed far too early to worries about survival and cannot remember a time when I did not have full responsibility for my own well-being. However, rather than feeling the freedom commonly associated with not having to take part in hard, adult decisions, I felt enormous frustration and anger that I was largely excluded from the decisions made about my placement, permanency, education, family relationships and future. It made me feel completely powerless that people who barely knew me, my dreams, my fears, my strengths or weaknesses were making decisions behind closed doors in courtrooms that would impact the rest of my life. By the time I aged out of foster care, I had almost become resigned to accepting that my life was completely out of my own control.

I wish that the social workers, judges, attorneys and providers who were responsible for me for so many years had let me participate in planning for my future from the start. As the Legislative and Policy Coordinator for the California Youth Connection, a foster youth empowerment and advocacy organization, I have the honor of witnessing the power of foster youth participation in decision-making in many different arenas. I believe that one of the most important places that foster youth need to be included is the dependency courtroom. Because so many important decisions happen in court, it is critical that foster youth have the opportunity to attend their court hearings and address the judge.

There may be no task as critical and as difficult as that of a dependency court

judge. Dependency judges make decisions that can completely change children and families' lives in painfully short time frames, often with little information or without knowing the people involved. It is estimated that on average, dependency judges have six minutes to make decisions about a child's life. In order to make these six minutes meaningful, foster youth must be in court so that judges can get direct, accurate information about their wishes, needs, and progress.

California's foster youth have fought to reinforce the right for youth to attend their court hearings. However, many youth report that although they have the right to attend their court hearings, they are not informed of this right, not sent notice of their hearings (it goes to the provider), and are discouraged from attending the hearings by their social worker or attorney. When youth do find out about and receive permission to attend court hearings, they are often not provided with the assistance (transportation, excuse from school, etc.) they need.

Some judges worry that the court process is too complex and procedural for foster youth to be able to participate effectively. It is true that many youth find the court process mysterious because no one has ever explained it to them, and because no one has explained the basics (i.e. that they can address the judge, how to dress, the right to meet privately with the judge, what types of issues the court can assist with, etc.). However, attorneys can help facilitate foster youth attendance by explaining the court process and proper courtroom etiquette, role-playing the process, and assisting the youth with transportation and letters to school or employers. Before and after court hearings, attorneys can assist youth clients by "translating" what

is said in court and what the impact will be. Judges also can help to make the court hearing more youth-friendly and easier to understand. Having the chance to observe the court process and their attorney in action advocating for them gives youth more confidence about the decisions that are made.

Some child welfare professionals worry that the information discussed in court about the youth's lives and families is disturbing and upsetting to the youth. It is a natural and honorable reaction to want to shelter children from the painful realities of the abuse, poverty, neglect, drug addiction, and mental illness that most foster children were removed from. However, people seem to quickly forget that this was our life before we came into foster care, that we have lived with these realities, and that we can never be sheltered from them. Professionals often try to protect youth from information that they worry will upset them, without realizing that not having realistic information ends up hurting more in the long run. In order to accept the available choices and be able to plan for the future, youth need to know what is going on. Hearing difficult information in an appropriate setting, with support available, makes working through the resulting feelings more manageable.

Foster care can be a dehumanizing experience for youth, and often at best a disempowering experience. Foster youth want the opportunity to attend court and be part of the planning process for their permanency, education, transition to adulthood and well-being. Allowing foster youth to exercise their right to attend and participate in their court hearings accords foster youth the respect they deserve and allows youth to have a part in deciding their own future. ■

This article originally appeared in *PARTNERS: Programs and Resources for Children and Families*, Los Angeles County Juvenile Court Newsletter, Volume 8, Number 2, Winter 2003. As part of its initiative to empower youth involved in the child welfare and juvenile justice system, the NACC publishes work written by youth about their experiences. Current or former court involved youth are invited to submit essays of 1000 words or less to the NACC, along with their name, address, and phone number. If we publish it, they will be paid \$100 from the Megan Louise Furth Youth Empowerment Fund. Please contact the NACC for additional information.



# Federal Policy Update

by Miriam A. Rollin, JD  
NACC Policy Representative, Washington, DC

## House / Senate Conference Report on the Federal Budget

The House / Senate Conference Report on the FY2006 Federal Budget (resolving differences between the House-passed and Senate-passed versions of the federal budget) passed on April 28 in both the House (214-211 vote) and the Senate (52-47 vote). Relevant provisions include the following:

- I. Reconciliation instructions for mandatory spending cuts that total \$34.7 billion over five years (due to be determined by the specified Committees by September 16).
  - Senate Finance Committee: \$10 billion must be cut from 2006-2010 from the Committee's mandatory spending, which includes Medicaid, Child Care and Development Block Grant (CCDBG), Foster Care, Adoption Assistance, Promoting Safe and Stable Families, and Social Services Block Grants; the Committee's mandatory jurisdiction also includes Medicare, SSI, et al.
  - House Energy and Commerce Committee: \$14.734 billion must be cut from 2006-2010 from the Committee's mandatory spending, which includes Medicaid, but also includes some energy funding.
  - House Ways and Means Committee: \$1 billion must be cut from 2006-2010 from the Committee's mandatory spending, which includes CCDBG, Foster Care, Adoption Assistance, Promoting Safe and Stable Families, and Social Services Block Grants; the Committee's mandatory jurisdiction also includes Medicare, SSI, et al.
- II. Reconciliation instructions for tax cuts that total \$70 billion over five years (due to be reported

by Finance/Ways & Means Committees by September 23).

III. Discretionary Spending (generally, the President's proposed budget levels).

- Education, Training, Social Services (Function 500, which includes elementary and secondary education, after-school, safe and drug-free schools, Head Start, Child Abuse Prevention and Treatment, Promoting Safe and Stable Families discretionary funding): the funding total reflects the President's proposed levels, plus a \$1.04 billion FY06 increase in the Department of Education.
- Income Security (Function 600, which includes CCDBG discretionary funding): the funding total reflects the President's proposed levels (a freeze in nominal dollars, which means a cut in real -inflation-adjusted - dollars).
- Justice (Function 750, which includes juvenile justice and delinquency prevention funding): the funding total reflects the President's proposed levels (which includes about a 50% cut in federal JJDP funding, with elimination of the Juvenile Accountability Block Grant).

The discretionary funding levels for specific programs will be set (as is the case each year) through annual appropriations bills. Congress has not yet taken action on the relevant appropriations bills (the one that funds the Departments of Education and of Health and Human Services, and the one that funds the Department of Justice).

### Welfare Reform (TANF) and Child Care (CCDBG) Reauthorization

Congress has, again, begun to move forward reauthorization legislation for welfare reform (Temporary Assistance for Needy Families, or TANF) and

child care (Child Care and Development Block Grant, or CCDBG). In the last Congress, such legislation passed the House and had begun Senate floor consideration, but was never finalized.

On March 15, 2005, the House Ways and Means Subcommittee on Human Resources approved H.R. 240, a TANF/CCDBG reauthorization that substantially increases work hour requirements for TANF recipients, and only increases CCDBG funding by \$200 million per year over the next five years, which is not even enough to cover inflation costs. (Currently, only one in seven eligible low-income children is a beneficiary of CCDBG.) On March 17, the Senate Finance Committee adopted S. 667, a TANF/CCDBG reauthorization that also increases work hour requirements for TANF recipients (though not as much as the House bill), and increases CCDBG mandatory funding by \$6 billion over the next five years. No further action (either in the House Ways and Means Committee or on the Senate floor) has been scheduled yet.

### Gangs Legislation

On April 20, the House Judiciary Committee adopted H.R. 1279, the "gangs bill." This bill includes mandatory minimums and other enhanced penalties, increased federalization of gang crime, and (in Section 115) an expanded provision regarding prosecuting juveniles as adults in federal court - despite the evidence indicating higher recidivism rates for juveniles tried as adults. The bill is expected to be considered by the full House on May 11. Similar legislation in the Senate (S. 155, introduced by Senators Feinstein, Hatch, et al.) has not yet been considered by the Senate Judiciary Committee in this session of Congress.

### Unaccompanied Alien Children Protection Legislation

On April 14, the Senate Judiciary Committee adopted S. 119, Senator Feinstein's Unaccompanied Alien

Child Protection Act. The bill specifies a number of procedural protections for unaccompanied alien children, including court-appointed guardians *ad litem*. No Senate floor action has been scheduled yet, nor has the House bill (H.R. 1172) moved forward in the House Judiciary Committee.

Other Relevant Bills Introduced, But No Further Action Yet

- H.R. 1704, introduced by Rep. Portman et al. on April 19, would provide modest funding for efforts to successfully reintegrate adult and juvenile offenders into their

communities, and to reduce their recidivism rates through reentry planning and services including educational, mental health, substance abuse, family reunification, etc.

- On February 15, H.R. 823 (Rep. Ramstad) and S. 380 (Sen. Collins) were introduced as the Keeping Families Together Act - a bill to provide modest funding to support efforts to end the practice of parents giving legal custody of their seriously emotionally disturbed children to state agencies (child welfare or juvenile justice), for

the purposes of obtaining mental health services for those children.

- On May 5, Representatives Castle and Boehner et al. introduced H.R. 2123, a bill to reauthorize the Head Start early education program for disadvantaged kids. Thankfully, the new bill does not include state block grants that had been in the predecessor bill (which was never enacted).

You can review and download copies of any Congressional bill, Committee Report, House or Senate floor statement, and up-to-date bill status at <http://Thomas.loc.gov>. ■



## Children's Law News

### News

**NACC 2005 Law Student Essay Competition.** The NACC is accepting essays for the 2005 Law Student Essay Competition. The winning essay will be published in the 2005 Children's Law Manual, and the winner will be given \$1,000, a one-year NACC membership, and an all expense paid scholarship to the NACC Children's Law Conference in Los Angeles. 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 the NACC by July 1, 2005.

**NACC Child Welfare Law Attorney Certification Program.** State advisory boards are now in place in the certification pilot jurisdictions of New Mexico, California, and Michigan. State authorities will be in contact with attorneys in the pilot jurisdictions regarding the application process. The certification manual, *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect and Dependency Cases*, will be available for purchase this summer. More information about the program and the book will be coming your way soon!

**NACC Summer Interns.** NACC welcomes two interns to our Denver office this summer. **Carla Scarpone** is a second year law student at the University of Denver pursuing a joint degree in law and social work. She received a Bergstrom Fellowship to work at the NACC this summer. **Michael Eisnach**, a junior at Union College in Schenectady, New York, and former NACC coached mock trial team member has received a grant to work at the NACC.

### Conferences & Trainings

**July 17 – 20, 2005** The NCJFCJ 68th Annual Conference will be held in Pittsburgh, Pennsylvania. [cpinfo@ncjfcj.org](mailto:cpinfo@ncjfcj.org)

**July 20 – 22, 2005** *The National Child Welfare Data Conference*, The National Child Welfare Resource Center on Legal and Judicial Issues and the National Resource Center on Child Welfare Information Technology, will be hosting a federally sponsored conference on the use of information technology in child welfare cases. The conference will be held at the Mayflower Hotel in Washington D.C. For additional information please visit <http://www.abanet.org/child/rclji>.

August 25 – 28, 2005

### NACC 28th National Children's Law Conference

#### *State of the Art Advocacy for Children, Youth, and Families.*

Renaissance Hollywood Hotel, Los Angeles, CA

Registrations being accepted now at [NACCchildlaw.org/training/conference.html](http://NACCchildlaw.org/training/conference.html).

### NACC Publications

The NACC Certification Manual, *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect and Dependency Cases*, will be available mid-June. The manual is designed as a study guide for attorneys sitting for the Certification exam and a comprehensive practice guide for all child welfare attorneys. Please watch for a special promotional flyer coming soon with additional details.

#### *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





23rd 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 \$75 but is available to NACC members at a 25% discount (\$58 annually). To subscribe, contact Hein toll free at 800-828-7571, ISSN 0278-7210, or contact the NACC for more information.

## Publications

*Child Maltreatment 2003*, U. S. Department of Health & Human Services (Washington, D.C. 2005). Available at: <http://www.acf.hhs.gov/programs/cb/publications/cm03/>.

*Child Victimization: Maltreatment, Bullying and Dating Violence, Prevention and Intervention*. Edited by Kathleen A. Kendall-Tackett, Ph.D., and Sarah M. Giacomoni, B.A. Civic Research Institute ISBN 1-887554-48-3.

*Foster Care Law: A Primer*, by Harvey Schweitzer and Judith Larsen. Carolina Academic Press (2005) 919-489-7486.

*Georgia's Responsibilities Toward Children in Foster Care: A Reference Manual*, by The Barton Child Law and Policy Clinic of Emory University. Available at [www.childwelfare.net](http://www.childwelfare.net).

*Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* (2005 Casey Family Programs). Available at [www.casey.org](http://www.casey.org).

*Juvenile Justice: Policies, Practices, and Programs*, by H. Ted Rubin, J.D., M.S.W. Civic Research Institute 609/683-4450 ISBN 1-887554-33-5.

*Safe Children and Healthy Families Are a Shared Responsibility: 2005 Community Resource Packet*. Children's Bureau, U.S. Department of Health & Human Services. Available at <http://nccanch.acf.hhs.gov/topics/prevention/index.cfm>.

*The Practice of Law for Children*, Marvin Ventrell. Montana Law Review, Vol. 66, No. 1 (Winter 2005).

## Jobs

**Executive Director, National Association of Counsel for Children, Denver, CO.** The National Association of Counsel for Children (NACC) is seeking a senior level juvenile law attorney for the position of Executive Director. The NACC has recently undergone a staff restructuring and the current Executive Director (ED) has become President and CEO in charge of visibility and development. The new ED will be responsible for the day to day operation



# 2005 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 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.

### NOMINEE:

NAME \_\_\_\_\_  
 DATE OF BIRTH \_\_\_\_\_  
 DEGREE \_\_\_\_\_  
 TITLE / POSITION \_\_\_\_\_  
 FIRM / ORGANIZATION \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY / STATE / ZIP \_\_\_\_\_  
 PHONE \_\_\_\_\_ FAX \_\_\_\_\_  
 E-MAIL \_\_\_\_\_  
 NACC MEMBER?  YES  NO NUMBER OF YEARS INVOLVED IN CHILD ADVOCACY \_\_\_\_\_

### NOMINATOR:

NAME \_\_\_\_\_  
 TITLE / POSITION \_\_\_\_\_  
 FIRM / ORGANIZATION \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY / STATE / ZIP \_\_\_\_\_  
 PHONE \_\_\_\_\_ FAX \_\_\_\_\_  
 E-MAIL \_\_\_\_\_

**Nominations Must Be Received By July 01, 2005.**

**Send Nominations to:** Awards Committee  
 National Association of Counsel for Children  
 1825 Marion Street, Suite 242, Denver, Colorado 80218



of the NACC, under the supervision of the CEO. The ED will be responsible for all NACC administration and program including the NACC Child Advocacy Resource Center, publications, the Juvenile Attorney Certification Program, NACC training programs including the National Children's Law Conference and trial skills training, the National Children's Law Office Project, Amicus Curiae Program, and policy advocacy initiatives. The ED will also work with the CEO on fund development and visibility matters. Direct client representation is a minimal component of the job. Travel is required. Applicants should have considerable experience in juvenile law practice and be knowledgeable in the areas of child welfare, juvenile justice, and family law. Applicants should also have management and administrative experience. Salary is competitive and commensurate with expertise and experience. Benefits include health, dental, optical and a retirement plan. The

NACC is an equal opportunity employer. Please Email: 1. cover letter; 2. resume / cv; 3. writing sample / publications; and 4. list of references and written references to: [Advocate@NACCchildlaw.org](mailto:Advocate@NACCchildlaw.org).

**Project Director – Manhattan, Legal Services for New York City, NY.** Legal Services for New York City (LSNY) is seeking a Project Director to lead a new Manhattan borough-wide program. The ideal candidate will bring strong leadership and management skills in addition to substantial experience in public interest law. Interested applicants should email cover letter and resume to: [jobpostings@lsny.org](mailto:jobpostings@lsny.org); Subject line: *Manhattan Project Director Position*

**Staff Attorney – Sacramento Child Advocates, Inc., Sacramento, CA.** Sacramento Child Advocates, Inc. (SCA) a 501(c)(3) non-profit provides legal services for abused and neglected children in Sacramento County. Position offers immediate courtroom experience.

Candidates should have a JD and 1 to 3 years experience. Send resume with cover letter to: Robert M. Wilson, Sacramento Child Advocates, Inc. 3050 Fite Circle, Suite 100, Sacramento, CA 95827

**Attorney – Children's Attorney Project, Clark County Legal Services, Las Vegas, NV.** Clark County Legal Services is seeking to hire a full-time attorney for its Children's Attorneys Project. The Children's Attorneys Project provides legal representation to children who are victims of abuse and neglect and are wards of the Department of Family Services. Applicants must have a JD from an accredited law school and be a member in good standing of a state bar. Applicants need not be admitted to the Nevada bar. Experience in child welfare law is preferred but not required. Interested parties should fax or email a cover letter and resume to the attention of Steve Hiltz, Esq. at [shiltz@clarkcountylegal.com](mailto:shiltz@clarkcountylegal.com); facsimile: 702-386-5906. ■

Please send children's law news and advocacy job openings to: *The Guardian*, 1825 Marion Street, Suite 242, Denver, CO 80218  
Fax: 303-864-5351 • E-mail: [advocate@NACCchildlaw.org](mailto:advocate@NACCchildlaw.org)

## NACC – Publications

### Children's Law Manuals

	Price	Quantity	Total
<input type="checkbox"/> Representing Children, Families, & Agencies (2004)	\$ 35 <sup>00</sup>	x _____ = \$ _____	
<input type="checkbox"/> Access to Justice for Children (2003)	\$ 25 <sup>00</sup>	x _____ = \$ _____	
<input type="checkbox"/> 25 Years of Child Advocacy (2002)	\$ 20 <sup>00</sup>	x _____ = \$ _____	
<input type="checkbox"/> Moving From Sympathy to Empathy (2001)	\$ 10 <sup>00</sup>	x _____ = \$ _____	
<input type="checkbox"/> Kids, Court and Community (1999)	\$ 10 <sup>00</sup>	x _____ = \$ _____	
<input type="checkbox"/> Serving the Needs of the Child Client (1998)	\$ 10 <sup>00</sup>	x _____ = \$ _____	
<input type="checkbox"/> Children's Law, Policy & Practice (1995)	\$ 10 <sup>00</sup>	x _____ = \$ _____	
<input type="checkbox"/> Law Manual Package (2004, 2003, & 2002)	\$ 60 <sup>00</sup>	x _____ = \$ _____	

### Other Publications

<input type="checkbox"/> The Child's Attorney <i>Ann Haralambie Pub ABA (1993)</i>	\$ 49 <sup>00</sup>	x _____ = \$ _____	
<input type="checkbox"/> Child Sexual Abuse in Civil Cases: A Guide to Custody & Tort Actions <i>Ann Haralambie Pub ABA (1999)</i>	\$ 75 <sup>00</sup>	x _____ = \$ _____	
<input type="checkbox"/> NACC Recommendations for Representation of Children in Abuse & Neglect Cases	\$ 15 <sup>00</sup>	x _____ = \$ _____	
<input type="checkbox"/> NACC's Better Public Policy for Children, Youth & Families: An Advocacy Guide	\$ 15 <sup>00</sup>	x _____ = \$ _____	

Subtotal \$ \_\_\_\_\_

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ORGANIZATION \_\_\_\_\_

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

CHECK HERE IF THIS IS A RESIDENTIAL ADDRESS:  NACC MEMBER:  YES  NO

PHONE \_\_\_\_\_ FAX \_\_\_\_\_

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Check enclosed (payable to NACC).

Please charge my    

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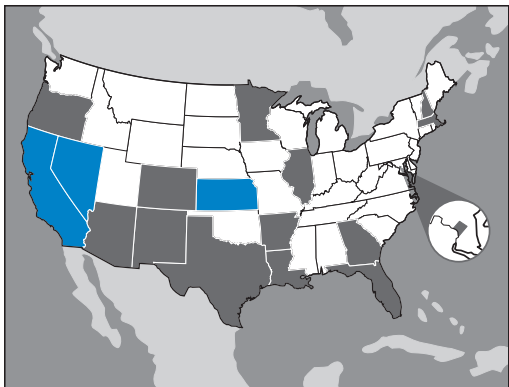
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Fax order to **303-864-5351** or mail to

**National Association of Counsel for Children**

1825 Marion St, Suite 242, Denver, CO 80218

PLEASE ALLOW 7-10 DAYS FOR UPS DELIVERY



## 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 NACC and we will put you in touch with an affiliate in your area or work with you to form one. Affiliate development materials and a current list of affiliates with contact information are available on our website at [www.naccchildlaw.org/about/affiliates.html](http://www.naccchildlaw.org/about/affiliates.html).

### Nevada

Following the NACC 2004 National Conference in Las Vegas, a group of child advocates, headed by staff at Clark County Legal Services, has been working to create an NACC affiliate. The NACC President recently spoke to the start-up group in Las Vegas, including local attorneys and judges, and momentum is building toward formal affiliate approval. If you are interested in being a member of this new group, please contact Stephanie Charter. Attorneys, social workers, judges, doctors, law professors and lay child advocates are all welcome!

*Get involved by contacting:*

#### Nevada Association of Counsel for Children

Stephanie Charter  
Phone: 702-386-1070  
Email: [scharter@clarkcountylegal.com](mailto:scharter@clarkcountylegal.com)

### Los Angeles

LA-NACC continues to be one of the NACC's most active affiliates. The group has had significant influence on legislation and this year sponsored legislation that would ensure the stability of children in their homes after parental rights have been terminated by requiring a court hearing before a child can be removed from a prospective adoptive home.

LA-NACC was also instrumental in developing the "YOU have RIGHTS too!" brochure for foster children. The brochures are distributed to every foster child in California and contain critical information including a list of specific children's rights in foster care, important telephone numbers and dependency court lingo. The State of California acknowledged the LA-NACC's contributions to this innovative pamphlet as follows:

*"The Office of the State Ombudsman wishes to thank the Los Angeles Affiliate of the National Association of Counsel for Children for their pioneering efforts to inform youth of their rights in the juvenile system."*

LA-NACC recently sponsored a debate between the Honorable Michael Nash, Presiding Judge of the Juvenile Court, and William Patton, Professor of Law at Whittier Law School at the Edward Edelman's Children's Court regarding last year's pending bill in California proposing open courts for the media and the public. The group also sponsored an informational presentation for lawyers and CASAs regarding the use of anti-depressant

medication on children. Currently, the LA-NACC is working on putting together a forum regarding the Judicial Council of California's proposed conflict of interest guidelines for court-appointed counsel for children.

LA-NACC has been an important part of planning the 2005 National Children's Law Conference to be held in Hollywood in August. Keep an eye out for the "Things to do in L.A." information packet prepared by LA-NACC to guide you while you are at the conference.

*Get involved by contacting:*

#### Los Angeles Affiliate of the NACC (LANACC)

Christina McClurg Riehl  
Phone: 323-980-8769  
Email: [riehlc@clcla.org](mailto:riehlc@clcla.org)

### Kansas

On March 4th, the KACC sponsored a CLE for attorneys involved in all aspects of juvenile law. Topics included the Indian Child Welfare Act, mediation, juvenile delinquency, and legal ethics. This successful event will be followed by another in Spring 2006 to focus specifically on ICWA. This comprehensive training is currently seeking faculty including Native American tribal representatives, judges, attorneys, and law professors. For more details on these trainings, please contact the KACC.

*Get involved by contacting:*

#### Kansas Association of Counsel for Children (KACC)

Sarah Sargent  
Phone: 785-357-1800  
Email: [Staff@adr.KScorxmail.com](mailto:Staff@adr.KScorxmail.com)

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# NACC – Membership Application

## I wish to become a member.

### INDIVIDUAL MEMBERSHIPS:

- Regular \$75     Supporting \$100\*     Patron \$250\*  
 Student \$35     Sustaining \$150\*

\*Includes special thank you listing in *The Guardian*.

- I would like \$10 of my membership dues to support my local NACC affiliate.

### GROUP MEMBERSHIPS:

Group memberships are available at a significant discount. Please contact the NACC for more information.

- Please send information on establishing an affiliate.

Make Check Payable to: NACC

Mail to: National Association  
of Counsel for Children  
1825 Marion Street, Suite 242  
Denver, CO 80218

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# NACC – Referral Network

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

### AREAS OF PRACTICE:

- abuse, neglect, dependency     guardianship, conservatorship  
 delinquency, status offenses     civil litigation  
 custody, visitation     mental health  
 child support     health care  
 adoption     jurisdiction  
 Other: \_\_\_\_\_

- I will consider pro bono referrals.

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

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

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