

# THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

Vol. 30, No. 2 ■ Spring 2008

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**IF IT WERE EASY, ANYBODY COULD DO IT:**

*The Specialized Practice of  
Juvenile and Family Law*

**NACC 31st National Juvenile and Family Law Conference**

August 3-6, 2008 ■ Hyatt Regency Savannah Riverfront ■ Savannah, Georgia



# NACC

National Association  
of Counsel for Children

[www.NACCchildlaw.org](http://www.NACCchildlaw.org)



**Mission**

THE MISSION OF THE NACC IS TO:

Strengthen the Delivery of  
Legal Services for Children

Enhance the Quality of  
Legal Services Affecting Children

Improve Courts and Agencies  
Serving Children, and

Advance the Rights  
and Interests of Children

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# THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

**THE 31ST NATIONAL  
JUVENILE AND FAMILY  
LAW CONFERENCE OF THE  
NATIONAL ASSOCIATION  
OF COUNSEL FOR CHILDREN**

**IF IT WERE EASY,  
ANYBODY COULD DO IT:**

*The Specialized  
Practice of Juvenile  
and Family Law*

This conference is designed primarily for attorneys who practice juvenile (dependency and delinquency) and family law. Most NACC members and training attendees dedicate much of their practices to the representation of children and youth, parents, or the state in juvenile dependency, delinquency, or family law cases. Juvenile and family court judges and magistrates are also active in the NACC. Due to the multidisciplinary nature of this work, professionals from the fields of medicine, mental health, social work, probation, law enforcement, and education belong to the NACC, attend our conferences, and serve as training faculty.

The conference is comprised of General Sessions and Workshops. Workshops are primarily organized along five tracks:

- 1 *Abuse & Neglect*
- 2 *Juvenile Justice*
- 3 *Family Law*
- 4 *Policy Advocacy*
- 5 *Children's Law Office Program*

You are free to sign up for and attend sessions in different tracks. NACC conferences are rated highly by participants for content, administration, networking opportunity, and enjoyment. The conference is the product of 31 years of training the country's attorneys, witnesses, and other court-involved personnel.

# Conference Sponsors

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American Professional Society on the Abuse of Children

Association of Family and Conciliation Courts

The Barton Child Law and Policy Clinic of the  
Emory University School of Law

Juvenile Law Committee of the Young Lawyers Section  
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National Center for State Courts

National Council of Juvenile and Family Court Judges

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National Institute for Trial Advocacy

Supreme Court of Georgia, Committee on Justice for Children



# Savannah, Georgia

[www.savcvb.com](http://www.savcvb.com) ☎ 877-SAVANNAH

*The NACC 31st National Conference will be held in Savannah, Georgia, at the Hyatt Regency Savannah on the Historic Riverfront. Savannah epitomizes true Southern hospitality and materializes clichéd images of the Old South, including oak trees draped with Spanish moss, dignified antebellum architecture, horse-drawn carriages, serene marshlands, boats cruising the river, and extraordinary food. Savannah has a rich history and a unique charm – consider making the conference into a family vacation. Family activities abound in Savannah, including dolphin cruises, carriage rides, golf, ghost tours, musical performances, shell collecting, and shopping.*

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brehtaking views of the river at the Hyatt's Windows Restaurant or sip cocktails at Vu lounge, which has the largest river view balcony in the city, or watch the sunset on the Hotel's floating dock. Just outside the hotel doors, board the Hyatt "water taxi" or tour the city by trolley, horse-drawn carriage, walking, or riverboat cruise. The NACC guest rate is a remarkable \$139 per night, single or double occupancy. Hotel check-in time is 3:00pm and check-out time is 12:00pm. Make reservations by calling 800-233-1234 and referencing the "National Children's Law Conference." **THE CUTOFF DATE FOR DISCOUNTED LODGING RESERVATIONS IS JULY 9, 2008.**

## TOURING SAVANNAH

NACC guests are encouraged to visit the Hyatt Regency Savannah hotel concierge or Olde Towne Trolley desks (located within the hotel) to arrange tours and other activities during the conference.

## TRAVELING TO SAVANNAH

**By Air :** The Savannah / Hilton Head International Airport connects with 16 non-stop destinations. Scheduled airlines include AirTran, American Eagle, Atlantic Southeast Airlines, Comair, Continental Express, Delta, Delta Connection, Northwest, United Express, US Airways and US Airways Express.

For more information, visit [www.savannahairport.com](http://www.savannahairport.com). Taxi fares from the airport to downtown Savannah are \$25.00 for one person and \$5.00 each additional person. Although personal transportation within Savannah is unnecessary, rental car companies are located at the Airport.

**By Rail :** Savannah is a major stop between New York and Miami on Amtrak's Palmetto and Silver Service. Daily service to and from Savannah is available aboard the Silver Star and Silver Meteor. Passengers can travel coach or first-class. Sightseeing lounge cars are also available. For more information, visit [www.amtrak.com](http://www.amtrak.com).

**By Bus :** Buses travel 24 hours a day, seven days a week, so visitors can travel to Savannah by day or night from anywhere in the U.S.

## GETTING AROUND SAVANNAH

To enjoy Savannah, a car is not necessary. Instead, walk or take tours around town. Chatham Area Transit operates a shuttle that makes stops within a couple of blocks of nearly every major attraction. For more information, visit: [www.catchacat.org/shuttle.aspx](http://www.catchacat.org/shuttle.aspx).

## ANNUAL LUNCHEON BANQUET

**Tuesday, August 5** The Annual Banquet is included in your registration but you must indicate your attendance on the registration form. The banquet will honor the NACC 2008 Outstanding Legal Advocate, Law Student Essay Winner, and newly certified Child Welfare Law Specialists (CWLS). This year's luncheon speakers will be state court improvement leaders who have brought Child Welfare Attorney Certification to their states as part of the federal court improvement plan. The annual lunch banquet is an important NACC event and we encourage all attendees to sign up. Your registration fee includes this lunch and limited space is available for non-conference attendee guests at \$40 per person.

# Pre-Conference

## Sun, Aug 3

**9:00 AM – 4:00 PM**

The NACC Red Book Training  
*1-Day Survey and Certification  
Exam Prep Course in Child  
Welfare Law and Practice*

# Day 1 Sun, Aug 3

**2:00 – 5:00 PM**

Conference Registration and Exhibits

**5:00 – 6:00 PM**

Reception

**6:00 – 6:30 PM**

Welcome to the Conference

**6:30 – 7:30 PM**

Savannah, Georgia, and  
America's Children

**7:30 PM**

Adjourn for Networking, Sightseeing,  
and Dinner on your own

# Day 2 Mon, Aug 4

**7:30 AM**

Conference Registration

**8:00 – 9:00 AM**

New Member/Attendee  
Orientation Session: What  
the NACC Can Do for You

**8:30 – 9:00 AM**

Continental Breakfast

**9:00 – 9:15 AM**

Opening Comments

**9:15 – 10:30 AM**

General Session 1: Addressing  
Disproportionality in the Juvenile  
and Family Court System

**10:30 – 11:00 AM**

Coffee Break

**11:00 AM – 12:00 PM**

General Session 2: Hidden in  
Plain Sight: The Tragedy of  
Children's Rights from Ben  
Franklin to Lionel Tate

**12:00 – 1:30 PM**

Networking Lunch: FLDS  
Case / Table Discussions  
Optional Luncheon  
or Lunch on Your Own

**1:30 – 3:00 PM**

Concurrent Session A

## 1 ABUSE & NEGLECT

Representing Children with  
Incarcerated Parents

## 2 JUVENILE JUSTICE

Representing Commercially  
Sexually Exploited Children

## 3 FAMILY LAW

What Does Best Interests Mean Anyway?

## 4 POLICY ADVOCACY

Foster the Future: The Pew Commission's  
Recommendations 4 Years Later

## 5 CLOP

Resources for Running an Effective Law  
Office: The NACC CLOP Program and  
Management Information Exchange

**3:00 – 3:30 PM**

Catered Break

**3:30 – 5:00 PM**

Concurrent Session B

## 1 ABUSE & NEGLECT

Ensuring a Child's Future  
through Education

## 2 IMMIGRATION

Immigrant Youth Justice Initiative

## 3 ABUSE & NEGLECT

The Long and Short of Child Neglect

## 4 POLICY ADVOCACY

Collaborative Advocacy:  
How Attorneys Can Put Words  
Into Action for System Reform

## 5 CLOP

Evaluating Attorney Performance and  
Measuring Child Outcomes for the  
Legal Side of the Child Welfare System

## MONDAY EVENING\*

Offsite Activity: Savannah  
Town and River Tours

# Day 3 Tue, Aug 5

**8:30 – 9:00 AM**

Continental Breakfast

**9:00 – 11:00 AM**

Concurrent Session C

## 1 TRIAL SKILLS

Trial Skills Session Essentials: Direct,  
Cross, Objections, Impeachment,  
and Introduction of Evidence

## 2 ALL

The Uses and Misuses of Psychiatry  
in Advocacy for Children

## 3 JUVENILE JUSTICE

Cruel and Unusual Punishment:  
Sentencing 13 & 14 Year-Old  
Children to Die in Prison

## 4 POLICY ADVOCACY

EmpowerMENT: The Georgia Kids  
in Court Program; and Consulting

with Children on Permanency and  
Kids in Court: The New Law

## 5 CLOP

Building a Culture of Philanthropy  
for Fundraising Success

**11:00 – 11:30 AM**

Coffee Break / Exhibitors

**11:30 – 1:30 PM**

Conference Lunch Banquet

• PRESENTATION OF AWARDS:  
NACC OUTSTANDING LEGAL  
ADVOCATE AND NACC  
STUDENT ESSAY WINNER

• INTRODUCTION OF 2008  
CERTIFIED CHILD WELFARE  
LAW SPECIALISTS

• WHY START A CERTIFICATION  
PROGRAM IN YOUR STATE

• LUNCHEON SPEAKERS

**1:30 – 3:00 PM**

Concurrent Session D

## 1 ABUSE & NEGLECT

Expediting Placement Under the ICPC

## 2 CRIMINAL

Criminal Prosecution of Child Abuse

## 3 ABUSE & NEGLECT

Representing Parents Experiencing  
Domestic Violence

## 4 FAMILY LAW

Running a Successful Family Law  
Practice (including making money at it)

## 5 CLOP

Establishing Institutional Diversity:  
Association of Family and Conciliation  
Courts and National Council of  
Juvenile and Family Court Judges

**3:00 – 3:30 PM**

Catered Break

**3:30 – 5:00 PM**

Concurrent Session E

## 1 ABUSE & NEGLECT

Foster Parents in Court: A  
Judge's Perspective

## 2 JUVENILE JUSTICE

Toward Culturally Sensitive  
Practice with LGBTQ Youth in  
the Juvenile Justice System

## 3 ETHICS (ETHICS CLE CREDIT)

Ethical Issues in the Legal  
Representation of Children

## 4 POLICY ADVOCACY

Serving the Whole Child: The Roles  
of Attorney, CASA, and GAL

## 5 CLOP

Model Code Creation: Using  
the Georgia Experience

**5:30 – 6:30 PM**

Film: Your Rights in Placement

# Day 4 Wed, Aug 6

**8:15 – 9:00 AM**

**NACC Affiliate Development:  
Creating and Running  
a NACC Affiliate**

**8:30 – 9:00 AM**

**Continental Breakfast**

**9:00 – 10:30 AM**

**Concurrent Session F**

**1 ABUSE & NEGLECT**

Interviewing Practices and the Interpretation of Children's Statements: A Linguistic Perspective

**2 ABUSE & NEGLECT**

Improving Representation of Parents in Child Welfare Cases

**3 JUVENILE JUSTICE**

What is Her Problem? Representing Delinquent Girls with Trauma Histories

**4 ALL**

Healthy Development and Attachment for Infants and Toddlers in the Child Welfare System

**5 CLOP**

Litigating Cases to Change Policy on Youth Aging Out

**10:30 – 11:00 AM**

**Catered Break**

**11:00 AM – 12:30 PM**

**Concurrent Session G**

**1 ADOPTION**

Inter Country Adoptions Under the Hague Convention

**2 JUVENILE JUSTICE**

Legislation of Juvenile Sex Offenders and the Impact for Your Client

**3 ALL**

Appellate Practice: Writs and Stays

**4 ABUSE & NEGLECT**

The Child Witness and the Use of Interview Tools

**5 ABUSE & NEGLECT**

Representing Pregnant and Parenting Teens

**12:30 – 1:30 PM**

**General Session 3: The Foster Care System in America**

**1:30 – 2:00 PM**

**Closing Session**

- 2009 CONFERENCE ANNOUNCEMENT
- DOOR PRIZES
- CLOSING REMARKS

**2:00 PM**

**Adjourn**

# Registration

## The NACC 31st National Juvenile and Family Law Conference Sunday, August 3 – Wednesday, August 6, 2008

NAME (MR / MS / DR) \_\_\_\_\_  
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 ETHNICITY (OPTIONAL) \_\_\_\_\_ NUMBER OF YEARS IN JUVENILE / FAMILY LAW \_\_\_\_\_

**Registration includes tuition, manual, reception, breaks, banquet, and box lunch on Wednesday (and a 1 year NACC membership for non-member registrants)**

**Regular Registration — postmarked by July 3, 2008**

NACC MEMBER \$365       NON-MEMBER \$465

**Procrastinator Registration — postmarked after July 3, 2008**

NACC MEMBER \$395       NON-MEMBER \$495

**NACC Certified Child Welfare Law Specialists:  
Take 10% off the applicable rate.**

**Pre-Conference | Sun Aug 3**

The NACC Red Book Training (includes the Red Book)

Yes, I will attend \$200 \$ \_\_\_\_\_

**Conference Registration Fee**

\$ \_\_\_\_\_

**Networking Luncheon | Mon Aug 4**

FLDS Case / Table Discussions

\_\_\_\_\_ person(s) @ \$29 per person \$ \_\_\_\_\_

**Offsite Activity | On Your Own — See Hotel Concierge**

**Annual Luncheon Banquet | Tues Aug 5**

Yes, I will attend (included in registration fee) \$ 0.00

I will bring \_\_\_\_\_ guest(s) @ \$40 per person \$ \_\_\_\_\_

**Closing Session / Box Lunch | Wed Aug 6**

Yes, I will attend (included in registration fee) \$ 0.00

**TOTAL AMOUNT ENCLOSED OR TO BE CHARGED \$ \_\_\_\_\_**

Please indicate vegetarian meal requirement(s)

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<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5

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



## Cases

### Dependency / Caseworker Liability

*The U.S. Court of Appeals for the Ninth Circuit Holds That Social Workers are Not Entitled to Absolute Immunity From Claims That the Social Worker Fabricated Evidence During an Investigation or Made False Statements in a Petition.*

*Beltran v. Santa Clara County*, 514 F.3d 906 (9th Cir. 2008).

Coby Beltran was born premature and was thereafter plagued by various medical complications. Coby's complications included a bowel motility problem, which went undiagnosed and thus unsuccessfully treated. Coby's medical problems occasionally caused his Body Mass Index to fall below the fifth percentile, placing him at risk of suffering long-term damage.

Over the course of Coby's first four years of life, the Social Services Agency of Santa Clara County (the Department) received four separate referrals based on allegations that Coby's mother suffered from Munchausen Syndrome by Proxy, a condition in which a parent fabricates, simulates, or induces symptoms in a child or tampers with laboratory samples or monitors, resulting in unnecessary medical procedures performed on the child. The four referrals were investigated and each was deemed unfounded.

Later, the Department received a fifth referral, which is the subject of this case. This referral, made by one of Coby's physicians, claimed abuse based again on the mother's alleged Munchausen Syndrome by Proxy. Melissa Suarez, a caseworker at the Department, was assigned to the case for investigation.

Following the investigation, Emily Tjhin, Suarez's supervisor, filed a Dependency Petition that included a three-page statement of the facts detailing the findings of Suarez's investigation, which Tjhin signed under

penalty of perjury. In addition, Suarez filed a separate Custody Petition, which she signed under penalty of perjury, and attached and incorporated by reference the three-page statement of facts.

As a result of the Petitions, the Court issued a Protective Custody Warrant and removed Coby from his parents' custody. At the initial hearing, the court found that Coby should be detained and temporarily placed under the care and supervision of the Department. Later, however, a full hearing was held wherein the Court denied the Dependency Petition and ordered Coby be returned to the care of his parents.

Thereafter, the Beltrons brought suit against Suarez and Tjhin under 42 U.S.C. Sec. 1983, claiming constitutional violations in connection with the removal of Coby from his parents custody and the attempt to place Coby in the custody of the state agency. The Beltrons argued that much of the information contained in the statement of facts was untrue and deliberately fabricated, while information favorable to the Beltrons was suppressed. The Beltrons claimed violations of the right of family association, privacy, and freedom from unreasonable seizure, which they asserted arose out of Suarez and Tjhin's actions.

Reyling on *Doe v. Lebbos*, 348 F.3d 820, 825-26 (9th Cir. 2003), the district court held that the caseworkers were entitled to absolute immunity for their actions in signing and filing the dependency and custody Petitions. The Beltrons appealed the dismissal of the claims based on absolute immunity.

The issue before this Court was whether social workers are entitled to absolute immunity for verified statements made in petitions that are filed with a dependency court.

The Court found that social workers have absolute immunity when they make "discretionary, quasi-prosecutorial decisions to institute court

dependency proceedings to take custody away from parents." However, the Court held that when a claim alleges that a social worker fabricated evidence during an investigation or made false statements in a Dependency Petition affidavit that was signed under penalty of perjury, the social worker is not entitled to absolute immunity. The Court reasoned that such acts are not similar to discretionary decisions about whether to prosecute. Thus, the Court held that social workers conducting investigations are not entitled to absolute immunity, thereby reversing the district court's ruling regarding absolute immunity and overruling the absolute immunity ruling in *Doe v. Lebbos*.

### Dependency / Indigent Parents Rights to Counsel at Dispositional Phase

*Massachusetts Supreme Judicial Court Holds That, After a Child is Adjudicated a Child in Need of Services, a Parent Has a Right to Counsel at the Dispositional Phase of the Proceeding if Custody is at Issue. In the Matter of Hilary*, 880 N.E.2d 343 (Mass., 2008).

Two Juvenile Court judges denied indigent mothers' requests for court-appointed counsel in child in need of services (CHINS) cases. The mothers in the separate cases both filed petitions in their respective county courts claiming violations of their statutory rights to counsel, as well as their rights to due process and equal protection of the laws. The two separate cases were consolidated and the issue came before the Massachusetts Supreme Judicial Court.

The issue before the Court was whether, after a child is adjudicated a child in need of services, a parent is entitled to counsel at the dispositional phase of the proceeding when custody of the child is at issue.

The Court noted that parents have a fundamental liberty interest in the care, custody, and management of their children. Further, the Court noted that due process is implicated whenever the State may deprive a parent of custody of a child. The Court noted that a CHINS proceeding's intrusion on a parent's liberty interest in the parent-child relationship is substantial.

The Court noted that parents do not have an explicit right to counsel at the dispositional phase of a CHINS proceeding. However, as the mother argued and the Court noted, § 29 of the Massachusetts statute was amended to read, in relevant part:

"[t]he parent, guardian or custodian of such child shall have and shall be informed of the right to counsel at all hearings under said sections and *in any other proceeding regarding child custody where the department of social services or a licensed child*

placement agency *is a party ... and if said parent ... is financially unable to retain counsel, the court shall appoint counsel ...*"

The resolution of the issue before the Court — whether, after a child is adjudicated a child in need of services, a parent is entitled to counsel at the dispositional phase of the proceeding when custody of the child is at issue — rests on the preliminary issue of whether the above phrase applies to parents in CHINS cases. Specifically, the Court must determine the meaning of "custody" and the meaning of "party."

As to the first issue — whether a CHINS proceeding involves child "custody" — the Court noted that although the statutes governing CHINS proceedings use the word "commit," as opposed to "custody," it is custody that is at stake when a child is removed from his/her parent at the dispositional phase of a CHINS proceeding. For example, if the judge commits the child to the

department, the "custody order" itself gives legal custody to the department. In addition, the Court noted that the department's own regulations state that where a child is turned over to the department pursuant to a CHINS order, the department retains "custody."

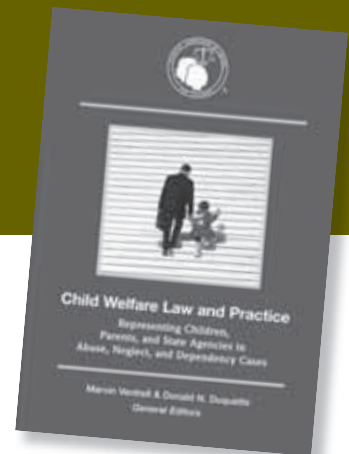
The second issue the Court addressed is whether the department is a "party" to a CHINS proceeding. Although nothing in the CHINS statute designates the department as a formal "party," the statute requires that the department be given notice of every CHINS proceeding and allows a judge to transfer custody of a child to the department. Thus, the Court concluded that, as a practical matter, the department is a party to the proceeding at the dispositional phase of a CHINS proceeding if custody of the child is at issue.

The Court found that, regardless of the unclear language used § 29, the language is consistent with its legislative purpose — that a parent has the

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- Children's Attorneys / Guardians *ad litem*
- Non-Attorneys who want to understand the legal process
- *All Advocates for Abused and Neglected Children*

**Written and edited by NACC President Marvin Ventrell, NACC Board Member Donald Duquette, with contributions from 23 national experts.**



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right to counsel at the dispositional phase of a CHINS proceeding.

Furthermore, the Court noted that, where a child has been adjudicated a child in need of services and has been in the department's custody for more than 12 months, a permanency hearing is required. At that permanency hearing, termination of parental rights is possible and pursuant to § 29, a parent has a right to appointed counsel at that hearing. Thus, the Court found that it logically follows that in upholding the legislative intent of § 29, a parent has a right to appointed counsel at the dispositional stage of CHINS proceedings if the judge is considering awarding custody to the department.

In sum, the Court held that, after a child is adjudicated a child in need of services, a parent is entitled to counsel at the dispositional phase of a CHINS proceeding if custody of the child could be granted to the department.

## **Hague Convention — International Child Abduction**

*The First Circuit Holds That a Parent's Removal of a Child From the Country of Habitual Residence to Seek Medical Treatment Is Wrongful Under Hague Convention.* Kufner v. Kufner, 519 F.3d 33 (1st Cir. 2008).

Tina, a U.S. citizen, and Dominik, a German citizen, married and settled in Germany with their two sons. Thereafter, Tina removed the children from Germany and fled to the U.S. At the time of the boys' removal from Germany, divorce and custody proceedings were underway; however, the proceedings were not yet final and joint custody remained in effect.

Dominik filed a petition in the U.S. District Court for the District of Rhode Island, alleging that his wife wrongfully removed their two minor sons from Germany. Dominik sought to have the children returned to Germany in his custody, pursuant to the Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention), as implemented by the International Child Abduction Remedies Act.

Tina argued that returning their sons to Germany would create a "grave risk of harm," a defense to a petition under

Article 13(b) of the Hague Convention. The district court held that Tina failed to prove her defense. The district court found that sons were wrongfully removed from Germany in violation of the Hague Convention and therefore granted Dominik's petition and ordered that the sons be returned to Germany.

Tina appealed, arguing, inter alia, that the district court erred by concluding that she had "wrongfully removed" the sons. Specifically, she argued that removal of the sons was not wrongful because she brought one of the sons to Rhode Island for medical treatment.

To petition for the return of a child under the Hague Convention, petitioner must establish by a preponderance of the evidence that the child was "wrongfully removed or retained." A removal or retention is wrongful when (1) it is in breach of rights of custody attributed to a person ... either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention, and (2) at the time of the removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

All parties agree that the children's residence was in Germany. Therefore, the only issues that remain are (1) whether Dominik had "rights of custody" over the sons under German law and (2) whether he was exercising or would have exercised those rights but for the removal.

Rights of custody under the Hague Convention encompass rights relating to the care of the child and the right to determine the child's place of residence. The Court found that Dominik had rights relating to the care of the sons and had at minimum a shared right to determine their place of residence. Under German law, where parents are married at the time of their child's birth, they have joint custody until operation of law or a court ordered termination of joint custody. Although at the time of the removal Tina and Dominik were undergoing divorce proceedings, the proceedings were not yet final. In addition, the Court found that the German court had awarded the parents temporary joint custody, pending the final resolution of the case. At the time of removal, that order had not been suspended or superseded. Thus, the

Court found that Dominik had rights of custody over the sons at the time of their removal within the meaning of the Hague Convention.

In determining whether Dominik was exercising or would have exercised those rights but for the removal, the Court noted that Dominik persistently sought custody of the sons and visited them often. Further, the Court noted that after the children were removed, Dominik successfully petitioned the German court for full custody of his sons on a temporary basis. Thus, the Court found that Dominik would have exercised his rights of custody but for Tina's removal of their sons from Germany.

The Court also held that a child's need for medical care was irrelevant for purposes of the wrongful removal determination because the underlying issue is whether the removal was consistent with the custody rights established in the country of habitual residence. The Court noted that Tina should have litigated in Germany any issues relating to the son's medical care. Thus, the Court found that the district court correctly concluded that the sons were wrongfully removed from Germany.

## **Family Law / Non-Parent Custody**

*The Connecticut Supreme Court Holds That in Third Party Custody Decisions, the Proper Standard of Proof is Preponderance of the Evidence.* Fish v. Fish, 939 A.2d 1040 (Conn. 2008).

In this post-dissolution child custody proceeding, the trial court awarded joint custody to the mother/plaintiff and the aunt/intervenor, with the aunt's residence designated as the child's residence. The appellate court affirmed and the father appealed.

The issue before the Court was whether a third party (meaning a non-parent, private individual) must satisfy the jurisdictional pleading requirements and burden of persuasion articulated in *Roth v. Weston*, 789 A.2d 431 (2002), when seeking the custody of a minor child over the objection of a fit parent.

According to *Roth*, a court may order third party visitation against the wishes of a fit parent only if the third party proves by clear and convincing evidence that he/she has a relationship

with the child akin to that of a parent and that the denial of the visitation will cause real and significant emotional harm to the child, analogous to the harm required to prove that a child is “neglected, uncared-for or dependent” under the temporary custody and neglect statutes.

In this appeal, the father argued that the trial court lacked jurisdiction to grant the aunt’s motion to intervene and improperly awarded her custody because she failed to prove by clear and convincing evidence the facts required by *Roth*.

The Court held that third party custody decisions require the application of a standard of harm more demanding and stringent than the “best interests of the child” standard.

However, the Court also held that the pleading requirements and burden of proof articulated in *Roth* are not constitutionally mandated in third party custody proceedings. The Court noted that third party custody proceedings challenge a parent’s liberty interest in a way that is fundamentally different than in visitation proceedings. Specifically, the requirements in *Roth* do not give adequate consideration to the welfare of the child, whose relationship with the parent is at issue in a custody proceeding (which is not at issue in a visitation proceeding).

Additionally, the Court noted that the requirements of *Roth* should not be applied to custody proceedings because it is not constitutionally necessary in order to protect the liberty interests of a parent. Further, the *Roth* requirements do not give adequate weight to the countervailing interests of the child. Further, the Court noted that applying *Roth* to custody decisions would contradict legislative intent.

In summary, where a third party seeks to intervene in a custody proceeding, the party must prove by a fair preponderance of the evidence facts demonstrating that he/she has a relationship with the child akin to that of a parent, that parental custody clearly would be detrimental to the child and, upon a finding of detriment, that third party custody would be in the child’s best interest. However, where the court considers awarding custody to a third party who been granted intervenor status, the court may award custody to that third party provided there is

proof of the foregoing facts by a fair preponderance of the evidence. The Court noted that a fair preponderance of the evidence standard is permissible because it is consistent with the legislature’s express rejection of the clear and convincing standard and because it comports with due process and the requirement of fundamental fairness, as described in *Santosky v. Kramer*, 455 U.S. 745 (1982).

## **Delinquency / Criminal Prosecution**

*Trial Court Lacked Jurisdiction to Convict a Defendant Where State Failed to Commence Juvenile Proceedings Prior to Seeking Adult Criminal Prosecution.* *State v. Breedlove*, 179 P.3d 1115 (Kan. 2008).

The issue before the Kansas Supreme Court was whether the district court lacked jurisdiction to convict and sentence a juvenile where the State failed to commence juvenile proceedings prior to seeking adult criminal prosecution.

In August 1995, three months before his 18th birthday, Breedlove committed the crimes of first-degree felony murder, aggravated robbery, and four counts of aggravated assault (first set of crimes). In September 1995, Breedlove committed the crimes of aggravated robbery, aggravated assault, and criminal use of a weapon (second set of crimes). Later that month, he was charged in juvenile court for the second set of crimes. The State filed a motion to transfer the case from juvenile court to district court. The Court granted the State’s motion. In January 1996, Breedlove pled guilty to the second set of crimes and was sentenced to prison.

Two years after the commission of the first set of crimes, the State charged Breedlove for those crimes. Although the crimes were committed when Breedlove was 17 years old, the charges were directly filed in district court rather than juvenile court. Breedlove’s status as a juvenile or adult was not addressed. Breedlove was tried as an adult for the first set of crimes; he was convicted and sentenced to life in prison.

In 2006, nine years after receiving his life sentence, Breedlove filed a motion, alleging that the district court lacked jurisdiction to prosecute him as an adult given the fact that the State failed to commence juvenile proceedings prior to

seeking adult criminal prosecution. The district court denied this motion; Breedlove then filed this appeal.

Breedlove first argued that his sentences were unlawful and should be reversed because they were imposed by a district court without jurisdiction. In a subsequent brief, Breedlove argued that his sentence should be vacated and the matter remanded for resentencing under the Kansas Juvenile Code.

The State conceded that Breedlove’s charges should have originated in juvenile court based on the juvenile code in effect at that time. However, the State argued that Breedlove originally waived personal jurisdiction for failing to object at that time. In the alternative, the State argued that Breedlove’s convictions should be reversed and the sentences vacated so the matter may begin anew.

The Court found that the district court had no jurisdiction to convict or sentence defendant. The Court then concluded that without jurisdiction a court cannot convict or sentence because any judgment would be void. Breedlove argued for an exception to this rule, that lack of jurisdiction means that the judgment is void based on the following Kansas statute: “If on appeal the order authorizing prosecution as an adult is reversed but the finding of guilty is affirmed or the conviction was based on a plea of guilty or nolo contendere, the respondent shall be deemed adjudicated to be a juvenile offender. On remand the district court shall proceed with disposition.” Breedlove argued that although no formal authorization order exists in this case, the order can be implied from the court’s conduct in allowing him to be prosecuted as an adult.

The Court found Breedlove’s arguments unpersuasive because it found the language of the statute to be clear. An order that the juvenile be tried as an adult was required for relief under this statute, and in this case there was no order. The Court reversed Breedlove’s conviction and vacated his sentence. “Under the facts of the case, where an individual was convicted as an adult for crimes which occurred when he was only 17, we hold that the State’s total failure to commence juvenile proceedings before seeking adult criminal prosecution resulted in a lack of the district court jurisdiction to try the case.”

## Family Law / Sperm Donors

*Sperm Donor's Commitment Not to Seek Parental Privileges in Exchange for Mother's Agreement Not to Seek Support Was Enforceable. Ferguson v. McKiernan, 940 A.2d 1236 (Pa. 2007).*

The issue before the Pennsylvania Supreme Court was whether a sperm donor's oral commitment not to seek parental privileges in exchange for mother's agreement not to seek child support was enforceable.

Mother asked Sperm Donor to donate his sperm for in vitro fertilization (IVF). Sperm Donor was reluctant, but agreed when Mother convinced him that she would raise the child on her own and that she was financially able to do so, and that she would not seek financial support from him. Additionally, this arrangement had the characteristics of an anonymous sperm donation – it would be carried out in a clinical setting and Sperm Donor's role in the conception would remain confidential.

No issues with the agreement arose until the resultant twins were five years old. Mother then filed a motion seeking child support from Sperm Donor. The trial court found that although the parties had formed a binding oral agreement, the agreement was unenforceable and contrary to public policy because a parent cannot bargain away a child's right to support. The court ordered Sperm Donor to pay \$1384 per month, effective retroactively to January 1, 2001, and an arrear of \$66,033.66 due immediately. The Superior Court affirmed.

Sperm Donor argued that it was the parties' intention to provide the Sperm Donor with the same legal protections as an anonymous sperm donor. He also argued that to uphold the lower courts holdings would call into question the legal status of all sperm donors, including those who donate anonymously through sperm banks. Sperm Donor asserted that creating an absolute ruling of parental responsibility in this case could threaten other contract-

based reproductive arrangements because the lower courts rulings could be interpreted to hold that any contract denying a child the support of any biological parent violates public policy.

Mother argued that the contract should be held unenforceable because it is a violation of public policy to rule against the best interest of the children. "There is no basis for making an exception to the best interest approach merely because the children at issue were conceived in a clinical setting and the agreement was made prior to their conception." Mother argued that the twins are Sperm Donor's offspring and thus should have the same right to support they would have had if Sperm Donor and Mother had conceived by sexual intercourse.

The Court began its analysis by noting the difference between traditional sexual reproduction and institutional sperm donation, and the relative support requirements. With traditional sexual reproduction, there is no doubt that the parties to a conception

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and birth may not contract to deny the child support. With institutional sperm donation, there is an agreement that the donation does not impose obligations nor grant privileges upon the sperm donor. However, the court noted that “between these poles lies a spectrum of arrangements that exhibit characteristics of each extreme to varying degrees.” The Court noted that although this case falls within this spectrum, it is closer in degree to the institutional sperm donation.

The Court stated that it takes seriously the best interests of the children of the Commonwealth and recognizes that to rule in favor of the sperm donor in this case would deny support to two children. However, the parties agreed to an arrangement that had all the characteristics of a conventional sperm donation, including the formation of a binding agreement. The Court reached its conclusion based on these particular facts and circumstances and it considered the broader implications of creating precedence on this issue.

The Court held that the agreement between Mother and Sperm Donor, where Sperm Donor would donate his sperm in a clinical setting, Sperm Donor would relinquish his parental rights, and would not be obligated to provide support, and Mother would not seek support from Sperm Donor was an enforceable agreement, and to rule the agreement enforceable does not violate public policy.

## **Amicus Curiae Update**

**Perez-Olano v. Mukasey, Ninth Circuit Court of Appeals.** The NACC signed on to an *amicus curiae* brief in a case before the Ninth Circuit Court of Appeals. Amici argued that Immigration and Customs Enforcement (ICE) is acting in an overly broad manner, effectively striping juvenile courts of their jurisdiction over minors.

The special immigrant juvenile status (SIJS) provisions of the Immigration and Nationality Act provide abused, abandoned, or neglected immigrant minors a means to become lawful permanent residents of the U.S.

Specifically, an abused, abandoned, or neglected minor may petition ICE, a bureau of the Department of Homeland Security (DHS), to be classified as a special immigrant juvenile. If granted SIJS, the minor may then apply to have his/her status changed to that of a lawful permanent resident of the U.S.

However, the SIJS scheme contains a “specific consent provision,” which states, “No juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction.” This provision is being used to prevent immigrant youth from accessing the protections of state juvenile court. The result is twofold — the immigrant youth are unable to apply for immigration relief for which they are eligible and they are denied the services and protections to which they are entitled.

The plaintiffs in this case are immigrant youth seeking SIJS who have been barred from accessing state juvenile courts by application of the above provision. The district court enjoined DHS from requiring specific consent in order for minors to seek state court protections. Defendants (DHS) appealed. The *amicus* brief is in support of the plaintiffs, who are seeking to protect the injunction entered by the district court against the defendants.

Amici argued that a broad interpretation of the specific consent provision violates the Tenth Amendment to the U.S. Constitution by usurping juvenile court jurisdiction over child welfare cases — traditionally an area of state concern. Amici urged the Court to prevent the federal government from interfering with state court matters in a manner that stretches beyond its Constitutional powers and statutory authority.

At the time of this writing, the Brief was pending before the Ninth Circuit Court of Appeals.

**In re. Corrine W, California Supreme Court.** The NACC joined

Legal Services for Children (San Francisco) in signing on to an *amicus curiae* brief filed by Youth Law Center (San Francisco), urging the Court to hold that foster parents are to be reimbursed for automobile liability insurance for a foster child.

Corrine was a teenager placed in foster care. Corrine wanted to learn to drive. Although Corrine’s foster parents supported this goal, they were unable to afford the required automobile liability insurance.

Federal law and California law require counties to reimburse foster parents for “liability insurance with respect to a child.” Corrine petitioned the juvenile court to order the Department of Children and Family Services (the Department) to reimburse the foster parents for the automobile liability insurance costs. The juvenile court denied the motion and Corrine appealed, claiming that the court failed to enforce the statutory requirement that her foster parents be reimbursed for “liability insurance with respect to a child.” The Court of Appeals held that the statute did not include automobile liability insurance.

The issue before the Court is whether the Department is obligated to reimburse foster parents for *automobile* liability insurance for a foster child.

Amici argued that the wording of the statute — “liability insurance with respect to a child” — was purposely written as a broad general category with no restrictions and thus the plain meaning interpretation of “liability insurance with respect to a child” includes automobile insurance.

Further, Amici argued that (1) foster youth experience dismal outcomes when they cannot prepare for adulthood by practicing independent skills such as driving, (2) driving increases employment opportunities, (3) driving is important to school success, (4) driving is an important normal adolescent experience, and (5) driving is important for foster youth to continue contact and relationships. ■

### **GUARDIAN CASES — NOTICE TO READERS**

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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.

# The Child Welfare Law Specialist – Spring 2008 Certification Update

by Camille Ventrell – Certification Director, and Maureen Martin – Staff Attorney for Certification



**Child Welfare Attorney Specialization** is a program of the NACC whereby the NACC certifies qualified attorneys as Child Welfare Law Specialists (CWLS). Attorneys receive the CWLS credential from the NACC by showing their proficiency in child welfare law through a comprehensive child welfare law competency process. For more information, please visit the NACC Certification Web Page at: [www.naccchildlaw.org/training/certification.html](http://www.naccchildlaw.org/training/certification.html) or contact NACC Certification Director, Camille Ventrell at [ventrell.camille@tchden.org](mailto:ventrell.camille@tchden.org), 888.828.NACC ext. 3.

## 2008 NACC Child Welfare Attorney Certification Exam

This spring, NACC staff administered the Certification Exam in three states: California, New Mexico, and Tennessee. Sixty-nine applicants were eligible to sit for the exam in these three states; thirteen Californians took the exam in San Francisco, three New Mexicans took the exam in Albuquerque, and forty-three Tennesseans took the exam in Nashville.

The new Child Welfare Law Specialists (CWLS) will be announced in June, 2008, and will be publicly acknowledged at the NACC Conference Annual Banquet Luncheon on Tuesday, August 5, 2008 in Savannah, Georgia.

## NACC Child Welfare Attorney Certification Open in 8 States

The NACC is currently accepting applications in 8 jurisdictions: Cali-

fornia, Connecticut, the District of Columbia, Iowa, Michigan, New Mexico, North Carolina, and Tennessee. If you are an attorney in one of these states, please submit your application as soon as possible in order to be considered for the Spring 2009 Child Welfare Attorney Certification Exam.

## Red Book Training – Savannah, Georgia – August 3, 2008

Don't miss the NACC Red Book Training! Whether you are a new child welfare attorney, an experienced attorney wanting an update, or anticipating taking the NACC Certification Exam, this is the course for you. Please see the NACC Conference information in this issue of The Guardian for more information and registration for the Red Book Training.

The NACC Red Book Training is a 1-day NACC Child Welfare Law and Practice survey course. The course follows the NACC's Red Book (Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases) covering the major competency areas of dependency practice and prepares you for the NACC Child Welfare Attorney Certification Exam. The course fee of \$200 includes your own copy of the Red Book.

NACC Certification applicants – please note that this is the last scheduled NACC Red Book Training open to all attorneys prior to the 2009 Certification Exam. Register now at [www.naccchildlaw.org/training/certification.html](http://www.naccchildlaw.org/training/certification.html) ! ■

# NACC Child Welfare Law Attorney Specialty Certification



Child Welfare Attorney Specialization is a program of the National Association of Counsel for Children (NACC) whereby the NACC certifies qualified attorneys as Child Welfare Law Specialists (CWLS). Attorneys receive the CWLS credential from the NACC by showing their proficiency in child welfare law through a comprehensive child welfare law competency process.

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# Federal Policy Update

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

Since the previous *Guardian* update, Congress failed to override Presidential vetoes of both FY08 appropriations bills and a children's health insurance bill, all of which have a significant impact on children around the country, including court-affected children. As a result of the failure to override the vetoes, Congress had to reduce funding levels in the appropriations bills to fit within the President's proposed budget levels, and settle for a State Children's Health Insurance Program bill that merely extended the program to maintain current caseloads through March 2009 (rather than the expansion to cover millions more children, as was passed with strong bipartisan votes in both the House and the Senate).

In happier news, Congress completed action on — and the President signed into law — a strong Head Start Reauthorization bill. The House and Senate draft bills to reauthorize the No Child Left Behind elementary and secondary education law, however, have not been able to move forward, even in Committee.

## Federal Budget/ Appropriations for FY 2008, 2009

The post-veto final FY08 Appropriations bill for Labor/Health and Human Services/Education (enacted as part of an omnibus appropriations bill in late December 2007) rejected the President's proposed cut in SSBG, and included a \$10 million increase in the Child Abuse Prevention and Treatment Act discretionary grants funding, to support new funding for evidence-based home visitation, shown by research to be effective at cutting child abuse and neglect among at risk families, and reducing later crime. For most other child welfare programs, the bill largely keeps FY08 funding close to the FY07 levels, except for a \$26 million cut in Promoting Safe and Stable Families. One bright spot in

the bill for investments in kids: the 21st Century Community Learning Centers (after-school) program got a \$100 million increase. The final FY08 appropriations bill held most juvenile justice programs at or a few million below FY07 levels, with one significant exception: the juvenile mentoring program was increased from \$10 million in FY07 to \$70 million in FY08.

On February 4, 2008, President Bush submitted his proposed FY 2009 Budget to Congress. It included another proposal for a "state option" block grant for foster care that would result in a foster care funding cap for states (similar to prior years' budget proposals). The budget included stagnant or slightly declining funding for most programs relevant to court-involved children and families, except for a deep cut in the Social Services Block Grant (cutting \$500 million, to take the program from \$1.7 billion to \$1.2 billion). The proposed budget did maintain the \$10 million (first proposed in the FY08 budget, and passed in the FY08 appropriations bill) for CAPTA discretionary grants for quality home visiting.

Once again, this year, the Administration proposed the elimination of all of the current juvenile justice and delinquency prevention and juvenile accountability program funding, and replacement of those programs with a proposed new "Child Safety and Juvenile Justice" block grant, although the cut this year was more than twice the cut from last year — for FY09, funding is proposed to be cut by 57% from last year's juvenile justice funding levels.

## State Child Health Insurance Program Reauthorization Legislation

Legislation to reauthorize, expand and improve the State Child Health Insurance Program (to cover children from

families who cannot afford health insurance coverage on their own, but whose incomes are just over the Medicaid eligibility limit) passed the House on 8/1/07 and passed the Senate on 8/2/07. A compromise that was very similar to the bi-partisan Senate bill, which included \$35 billion in additional funding over the next five years for SCHIP (paid for by a tobacco tax), was passed by the House on 9/25/07 and by the Senate on 9/27/07, but vetoed by the President. A House attempt to override the veto on 10/18/07 fell 13 votes short of the 2/3 vote required. Further negotiations to make modifications to the legislation to garner the additional House support needed for veto override were unsuccessful (resulting in further unsuccessful House veto override efforts). An extension of SCHIP through March 2009 (with funding to cover current caseloads) was enacted in late December 2007.

## Head Start Reauthorization

On June 19, 2007, the Senate passed S. 556, the "Head Start for School Readiness Act," a bill to reauthorize the Head Start early education program for disadvantaged kids. The House passed their Head Start reauthorization bill — H.R. 1429 — by a vote of 365-48 on May 2nd. The House- and Senate-passed legislation includes a variety of program improvements, including some language to improve Head Start access for foster children. Thankfully, the bill does not include state block grants with inadequate quality standards, which had been in a previous House-passed bill (that bill never got enacted). The final House/Senate Conference Report version of H.R. 1429 was passed by the House and Senate in November, and signed into law by the President in December 2007.

## Offender Reentry Legislation

On March 28, 2007, the House Judiciary Committee marked up the bi-partisan Second Chance Act of 2007, H.R. 1593, a bill to provide comprehensive reentry services for youth and adults returning to their communities after placement in lock-up. S. 1060, the bi-partisan Senate version of the Second Chance Act of 2007, was approved by the Senate Judiciary Committee on 8/2/07. On 11/13/07, H.R. 1593 was agreed to in the House “under suspension of the rules” (2/3 vote was required), with a final vote of 347-62. The bill is expected to be considered on the floor of the Senate in the near future.

## Mentally Ill Offender Legislation

H.R. 3992, a bill to reauthorize grants for the improved mental health treatment and services provided to adult and juvenile offenders with mental illnesses, was introduced by Rep. Bobby Scott on 10/30/07. The bill was marked up in the House Judiciary Committee in November, and passed by voice vote on the floor of the House on January 23, 2008. The Senate companion bill, S. 2304, is scheduled for Senate Judiciary Committee markup on February 14, 2008.

## Gangs Legislation

On June 14, 2007, the Senate Judiciary Committee approved Senators Feinstein and Hatch's S. 456, the latest version of their “gangs bill”. This bill includes mandatory minimums and other enhanced penalties, and increased federalization of gang crime, although the bill now also includes some prevention resources, and no longer has the previously-included section providing for expanded prosecution of juveniles as adults in federal court. S. 456 passed on the Senate floor by unanimous consent on 9/21/07. Companion legislation in the House, H.R. 3547, was introduced on 9/17/07 by Rep. Schiff et al. On 10/16/07, the Chairman of the House Judiciary Committee, Rep. Bobby Scott, introduced the Youth PROMISE Act, H.R. 3846. The bill would support a variety of proven-effective prevention and intervention approaches to reduce youth involvement in gangs and violent crime. No House Judiciary Committee

markup of the Schiff or Scott bill is scheduled at this time.

## Indian Child Protection and Tribal Foster Care

On January 25, 2007, S. 398, a bill to amend the Indian Child Protection and Family Violence Prevention Act, was introduced. Among other things, this legislation requires that reports on tribal-related child abuse allegations include information on any federal, state or tribal final conviction, and that these reports be transmitted to and kept by the FBI. The full Senate passed this bill on May 25, 2007. No House action has occurred yet.

Further, on August 2, 2007, Sen. Baucus introduced S. 1956, the Tribal Foster Care and Adoption Access Act of 2007, a bill to amend Soc. Sec. Act Title IV-E (relating to foster care and adoption assistance) to enable tribes to receive IV-E payments. A House companion bill (H.R. 4688) was introduced in mid-December. There has been no action on this legislation yet.

## Safe Babies Act

On March 15, 2007, the Senate Judiciary Committee marked up S. 627, the Safe Babies Act. The bill would amend the federal Juvenile Justice and Delinquency Prevention Act to create a National Court Teams Resource Center and to assist local court teams to more effectively address the needs of maltreated infants and toddlers. No Senate floor action has occurred yet. H.R. 1082, the House version, was introduced 2/15/07, but no action on the bill has been scheduled.

## Public Service Student Loan Forgiveness

Provisions for public service student loan forgiveness were enacted on 9/27/07 as part of P.L. 110-84, the College Cost Reduction and Access Act. Under Title IV of that Act, a person employed in public safety, law enforcement, public health, public education (including early childhood education), social work in a public child or family service agency, public interest law services (including prosecution or public defense or legal advocacy in low-income communities at a nonprofit organization), or public child care may be eligible for forgiveness of

any remaining interest and principle payments owed after 120 monthly payments made while so employed with regard to federal student loans, such as a Federal Direct Stafford Loan, a Federal Direct PLUS Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan.

Perkins loan forgiveness provisions were also included in the Higher Education Act reauthorization legislation (H.R. 4137), passed by the House on 2/7/08, by a vote of 354-58. The bill includes loan forgiveness for, *inter alia*: (1) CHILD WELFARE WORKERS — An individual who (A) has obtained a degree in social work or a related field with a focus on serving children and families; and (B) is employed in public or private child welfare services. (2) PUBLIC SECTOR EMPLOYEES — An individual who is employed in public safety (including as a first responder, firefighter, police officer, or other law enforcement or public safety officer), emergency management (including as an emergency medical technician), public health (including full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), or public interest legal services (including prosecution or public defense or legal advocacy in low-income communities at a nonprofit organization). (3) MENTAL HEALTH PROFESSIONALS — Individuals who have at least a master's degree in social work, psychology, or psychiatry and who are providing mental health services to children, adolescents, or veterans. The Senate legislation to reauthorize the Higher Education Act (S. 1642) passed the Senate with a vote of 95-0 on 7/24/07. House/Senate conference to resolve the differences between the bills has not yet been scheduled.

## Other Relevant Bills Introduced, But No Further Action Yet

- On 1/24/07, H.R. 687 (Rep. Ramstad) and S. 382 (Sen. Collins) were introduced as the Keeping Families Together Act — legislation to provide modest funding to support efforts to end the practice of parents giving legal custody of their seriously emotionally disturbed children



# 2008 Outstanding Legal Advocacy Award

## NOMINATION APPLICATION

**PURPOSE:** The NACC is looking for people who have tipped the scales in favor of children. Many children cannot rise above their circumstances without the help of real-life heroes. Our nation's courts, clinics, schools, homes, law enforcement agencies and social service organizations are filled with people who have made a difference. The NACC created the Outstanding Legal Advocacy Award to honor excellence in the field of children's law, advocacy, and protection. The NACC presents its Outstanding Legal Advocacy Award annually to individuals and organizations making significant contributions to the well being of children through legal representation and other advocacy efforts. Nominees' accomplishments may include work in child welfare, juvenile justice, private custody and adoption and policy advocacy. All child advocates are eligible.

### The Nomination Letter should highlight:

- The nominee's activities on behalf of children that have significantly promoted the protection and welfare of children.
- The history of the nominee's involvement in child advocacy work.
- The nominee's affiliation with children and youth service organizations.
- Any other relevant personal background information.

### Nominations Must Include:

- The nomination letter
- A completed application form
- Nominee's Curriculum Vitae / Resume
- A list of nominee's affiliations with other children and youth service organizations

### Nominations May Also Include:

- Supporting materials such as: Letters of Support, Photographs, Newspaper clippings, narratives, or other items describing the candidate's efforts.

### NOMINEE:

NAME \_\_\_\_\_

DEGREE \_\_\_\_\_

TITLE / POSITION \_\_\_\_\_

FIRM / ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

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

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

E-MAIL \_\_\_\_\_

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 1st, 2008.*

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



to state agencies (child welfare or juvenile justice), for the purposes of obtaining mental health services for those children. No further action has been scheduled.

- On 2/16/07, Sen. Clinton and Sen. Snowe introduced the Kinship Care-giver Support Act (S. 661), which provides funding for kinship navigator programs, provides a IV-E support option for kinship care, and provides notice to relatives of chil-

dren entering foster care. No Finance Committee action has yet been scheduled. On 5/7/07, Rep. Danny Davis introduced H.R. 2188, the House version of the legislation, but no further action has occurred.

- On 2/16/07, Sen. Bond and Sen. Clinton introduced S. 667, the Education Begins at Home Act, which would authorize \$500 million in new federal funding for early childhood home visiting (some models of such

parent coaching have demonstrated significant impact on the prevention of child abuse and neglect, and later delinquency). The House Education Reform Subcommittee held an excellent hearing on this legislation in the last Congress (on 9/27/06). On 5/16/07, Rep. Danny Davis and Rep. Todd Platts introduced the House version of the legislation, H.R. 2343. No action on this legislation has yet been scheduled in this Congress. ■

For further information on any federal legislation (including copies of bills, copies of committee reports, floor votes, etc.), visit [Thomas.loc.gov](http://Thomas.loc.gov)



## Children's Law News

### News

**The Texas (FLDS)** cases took an unexpected turn on May 22, 2008 when the Third Court of Appeals in Austin unanimously ruled that a district judge had unlawfully allowed the state to remove up to 468 children from their homes on insufficient evidence that they were in immediate danger. Twelve children have already been reunited with their parents. The state immediately filed an appeal, requesting that the rest of the children be kept in foster care while the case is reviewed. It is highly unusual for an appeals court to intervene in a continuing case, especially in one involving child protection.

**NACC Child Welfare Law Attorney Certification is now open in the following eight states: California, Connecticut, District of Columbia, Iowa, Michigan, New Mexico, North Carolina, and Tennessee.** For more information on applying in one of these states or the development of the program in other states, contact the NACC or visit: [www.naccchildlaw.org/training/certification.html](http://www.naccchildlaw.org/training/certification.html).

**NACC 2008 Outstanding Legal Advocacy Award.** Nominations for the 2008 Outstanding Legal Advocacy Award are now being accepted. The

award is given annually to individuals and organizations making significant contributions to the well-being of children through legal representation and other advocacy efforts. Send nomination letter and supporting documentation to NACC Awards, 1825 Marion Street, Suite 242, Denver, CO 80218. Contact the NACC for more information. The deadline is July 1, 2008.

**NACC 2008 Law Student Essay Competition.** The NACC is accepting essays for the 2008 Law Student Essay Competition. The winning essay will be published in the 2008 Children's Law Manual, and the winner will be given \$1,000, a one-year NACC membership, and a scholarship to the 2008 conference in Savannah, GA. Essays will be evaluated on the importance of the topic to advancing the legal interests of children, persuasiveness, and quality of research and writing. Essays should be submitted electronically to: [advocate@NACCchildlaw.org](mailto:advocate@NACCchildlaw.org) by June 1, 2008.

**Join the NACC Children's Law Listserv Information Exchange.** All NACC members are encouraged to become part of the NACC Listserv which provides a question, answer and discussion format for a variety of children's law issues. To join, simply send an e-mail to [advocate@NACCchildlaw.org](mailto:advocate@NACCchildlaw.org)

and say "Please add me to the NACC Listserv."

### Conferences & Training

**August 3-6, 2008**

**NACC 31st National Juvenile and Family Law Conference**, Savannah, GA. For more information, contact the NACC or visit: [www.NACCchildlaw.org/training/conference.html](http://www.NACCchildlaw.org/training/conference.html). Conference brochures have been mailed out and are available on our website.

### Publications

**Hope's Boy: A Memoir**, by Andrew Bridge, Hyperion (2008).

**Hidden in Plain Sight: The Tragedy of Children's Rights From Ben Franklin to Lionel Tate**, by Barbara Bennett Woodhouse (2008).

**The Dependency Quick Guide (Dogbook)**, The California Administrative Office of the Courts Center for Families, Children, and the Courts has recently developed a new reference manual for attorneys representing parents and children in juvenile dependency proceedings. The guide is divided into three major parts: Hearings, Fact Sheets, and Summaries of Seminal Cases. It is designed to provide guidance and short answers to

common problems that attorneys face. Available online at: [www.courtinfo.ca.gov/programs/cfcc/programs/description/DRAFT.htm](http://www.courtinfo.ca.gov/programs/cfcc/programs/description/DRAFT.htm).

**Achieving Quality Legal Representation for Children, Families, and the State, the 2007 edition of the NACC Children's Law Manual Series** is now available for purchase. Copies may be ordered from the NACC by calling toll free 1-888-828-NACC, using the Publications Order Form in this issue, or online at [www.naccchildlaw.org/training/manuals.html](http://www.naccchildlaw.org/training/manuals.html).

**NACC Child Welfare Law Office Guidebook: Best Practice Guidelines for Organizational Legal Representation of Children in Abuse, Neglect, and Dependency Cases (The Blue Book)**. Created as part of the NACC Children's Law Office Project (CLOP), the Blue Book is a collection of 33 best practice guidelines intended to move child welfare law offices toward model practice. It is organized by three areas of operation: administration, development, and program. Within these categories are guidelines and commentary developed by the CLOP staff and advisory board to promote best practices in the delivery of legal services to children. Limited numbers

of hard copies are available for \$20 each by contacting the NACC. The searchable electronic version is available at no charge at: [www.naccchildlaw.org/about/nclop.html](http://www.naccchildlaw.org/about/nclop.html).

**Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect and Dependency Cases (The Red Book)**. Please see the ad in this issue or contact Bradford Publishing at 800-446-2831; [www.bradfordpublishing.com](http://www.bradfordpublishing.com). NACC members receive a 20% discount.

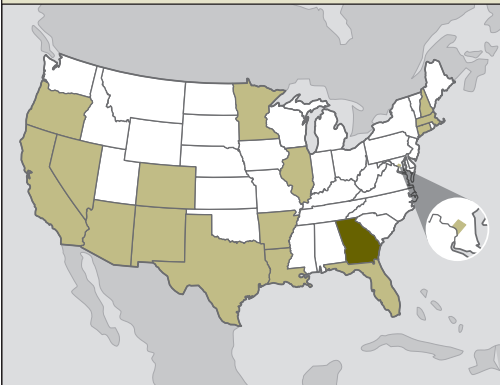
## Jobs

**Senior Public Administrative Analyst, the National Abandoned Infants Assistance Resource Center (NAIARC), the University of California, Berkeley.** The NAIARC is seeking a full-time Senior Public Administrative Analyst knowledgeable about issues concerning families affected by HIV and substance abuse. NAIARC strives to enhance the quality of social services delivered to families affected by drugs and/or HIV by providing training and resources to professionals who work with these families. Project activities will include audio, web, and national conferences

and trainings; technical expert policy/practice work groups; bi-annual magazine, as well as other products, resources and publications; policy and qualitative research projects. To view the full job description and apply online, visit [jobs.berkeley.edu](http://jobs.berkeley.edu), job code 8292.

**Visiting Instructor for the Children & Youth Law Clinic, University of Miami School of Law.** The University of Miami Children and Youth Law Clinic offers a one-year renewable post graduate fellowship for individuals interested in practicing law in a clinical setting. The Clinic works on a wide range of issues affecting low-income children including dependency/child welfare, public benefits, health and disability, education, independent living, immigration and guardianship. The clinic undertakes substantial direct client representation as well as law reform and policy advocacy projects. The Fellow's duties will include a significant focus on law reform policy and litigation, with some classroom clinical teaching, direct supervision of law student practitioners and direct client representation. For more information, please visit [www.miami.edu/careers](http://www.miami.edu/careers), job code 036936. ■

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)



## 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).

### Georgia (GACC)

The NACC is coming to Georgia! The NACC 2008 National Conference will be held at the Hyatt Riverfront in Savannah, GA, August 3-6, 2008. For more information on local planning and coordination efforts, contact GACC Executive Director, Jane Okrasinski at [jane.okrasinski@gmail.com](mailto:jane.okrasinski@gmail.com). ■

# Thank You

The National Association of Counsel for Children thanks the following donors and members for their generosity.

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# NACC – Membership Application

**I wish to become a member.**

**INDIVIDUAL MEMBERSHIPS:**

- Student \$45
- Regular \$90
- Supporting \$125\*
- Sustaining \$150\*
- Patron \$250\*
- Lifetime \$2500\*

\*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

Telephone: Office: 303-864-5320 • Fax: 303-864-5351

Federal Tax ID#: 84-0743810

*All but \$90 of your membership fee is tax-deductible.*

Join Online at: [www.NACCchildlaw.org](http://www.NACCchildlaw.org)

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FIRM OR AGENCY \_\_\_\_\_

ADDRESS \_\_\_\_\_

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**NACC**  
National Association  
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