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Every year, nearly one million abused and neglected children come in contact with our nation’s foster care system. Yet, too often, the very system created to protect and care for vulnerable children instead inflicts further damage.

Life in foster care can be a turbulent experience, characterized by movement from placement to placement, disruption of schooling, and the severing of ties with all that is familiar to the child, often including siblings and extended family. While children in foster care possess a resilience and indomitable spirit that serve them well, they also pay a heavy toll. Within two years of aging out of a child welfare system that committed collectively to parent them, more than half of former foster youth are unemployed, a third become homeless, and one in three will be incarcerated.

Recently, the NACC and the American Bar Association called for critical national reforms that would enable courts to better protect children in foster care. Working with the Children’s Law Center of Los Angeles, both organizations passed resolutions endorsing the recommendations of the national, nonpartisan Pew Commission on Children in Foster Care and echoing themes sounded by organizations including the National Council of Juvenile and Family Court Judges, the Conference of Chief Justices and Conference of State Court Administrators, the Judicial Council of California, and the Texas Supreme Court Task Force on Foster Care.

The Pew Commission, led by former congressmen Bill Frenzel (R-MN) and William H. Gray (D-PA), issued sweeping recommendations last year urging an overhaul of the nation’s foster care system. The Pew Commission recommendations focused on two fundamental concerns that currently allow too many children to languish in foster care: (1) federal child welfare financing that is unduly restrictive and favors foster care over other services and options that could keep families intact and more quickly provide children with safe, permanent families, and (2) state and local courts face roadblocks that hinder court oversight of child welfare cases and prolong stays in foster care.

An extension of the Commission’s work, the newly launched “Home At Last” initiative, spearheaded by the Children’s Law Center of Los Angeles, seeks to harness momentum resulting from the Pew report and bring about implementation of the Commission’s court reform recommendations. The NACC resolution underscores the need for these reforms by calling attention to the critical, yet often overlooked, role played by the courts in addressing the needs of children and emphasizing the need to support and enhance the functioning of the dependency judicial system.

It is widely agreed that our nation’s dependency courts face significant hurdles. A groundbreaking 2004 national survey of 2,000 judges who hear child-abuse and neglect cases found that barely half of judges received any child-welfare training before hearing dependency cases. Conducted by Fostering Results, a national education and outreach campaign designed to raise awareness of foster care and related issues, the first-of-its-kind survey also revealed that overloaded court dockets, a chronic shortage of available services for families, and poorly prepared caseworkers present major barriers to finding stable and secure homes for children in foster care.

The NACC and ABA resolutions address many of the issues identified in the Fostering Results survey and include a broad spectrum of reforms designed to enhance the overall functioning of the dependency judicial system:

**Legal Representation and Youth Participation** – Children in foster care should have the right to effective legal representation in the court process. Children deserve to stand on equal legal footing in the court process. They also should be notified of their own court proceedings and given a meaningful opportunity to participate in proceedings that will chart their future. Even the most skilled judges and attorneys with the best intentions should not make life-changing decisions about a child they have never met or know only as a case number. Youth need to be granted the dignity and respect of expressing their own views about decisions that will alter their lives in the most significant and lasting ways imaginable.

**Attracting and Retaining Qualified Attorneys and Judges** – To attract qualified attorneys and judges to juvenile courts, the NACC and ABA resolutions support reasonable compensation for children’s attorneys and the establishment of loan forgiveness programs for lawyers who specialize in this area. Cost-saving measures that result in poorly compensated counsel and excessive caseloads may well result in greater expense over time because of poorer quality of representation, decreased efficiency, high turnover and poorer outcomes for children.

**Training** – Because of the broad range of decisions associated with ensuring the welfare of abused and neglected children, attorneys and judges who work in dependency courts must have access to adequate, ongoing training relevant not only to dependency law but also child development, cultural competency, health, mental health and education issues.

**Collaboration** – Children must not be dealt with piecemeal. Courts and child welfare agencies should be encouraged to
Judicial Leadership – Judicial leadership should play a significant role in facilitating reforms and providing support and oversight of dependency courts. The resolutions emphasize the importance of leadership from chief justices and other state court leaders in developing court systems to improve service to children, provide training for judges and promote more effective standards for dependency courts, judges and attorneys.

Caseloads & Tracking – The resolutions recognize that judges and attorneys must have reasonable caseloads if they are to consider the full ramifications of their decisions and effectively advocate on behalf of children. Additionally, courts must be armed with outcome-focused data and have the ability and technology to manage their cases, track children’s progress through the system, execute federal and state mandates, and implement best practices.

Flexible Funding – Current restrictions on federal funding streams favor entry of children into foster care rather than the development of supportive prevention and diversion programs. The resolutions call for increased and adequate federal resources with flexibility to use them to support the needs of children and families at risk and provide preventive services to children and families who can best be served without removing the child from his or her family.

Further, both the NACC and ABA resolutions urge Congress and state legislatures to support the dependency courts and the important work they perform through the provision of adequate resources for the legal process and all other parts of the child welfare system.

In passing these timely resolutions, the NACC and ABA have taken a stand alongside many leaders in the legal community to promote dependency court reform. Let us hope that these efforts will become part of a growing commitment nationwide to a juvenile court system staffed by respected and well-trained professionals who have sufficient resources, adequate information and enhanced support to attend to the needs of abused and neglected children in our community.

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Custody / Same-Sex Parents Rights


The California Supreme Court reversed the decision of the trial court in favor of the respondent gestational mother E.G. The trial court improperly granted the respondent’s motion to dismiss the petition based on the donor’s waiver, in an ovum donor form, of her right to claim legal parentage. Although the appellate court affirmed the trial court’s ruling, the supreme court reversed finding that both parties were parents of the children.

When E.G. and K.M. became romantically involved in June of 1993, E.G. testified that she was already trying to conceive a child through in vitro fertilization. E.G. reported that she had been visiting fertility clinics to inquire about artificial insemination since March of 1993. From July 1993 through November 1994, E.G. attempted artificial insemination 13 times without success. After doctors determined E.G.’s eggs were sterile, the couple decided to use K.M.’s eggs and implant them in E.G.’s uterus.

In March of 1995, K.M. signed a form stating that any child resulting from in vitro fertilization is her own legitimate child or children. Several weeks later, a form which stated that any child resulting from in vitro fertilization is her own legitimate child or children. Several weeks later, ova were withdrawn from K.M. and embryos were implanted in E.G. In December of 1995, E.G. gave birth to twin girls. After the twins were born, E.G. asked K.M. to marry her, and the couple exchanged rings on Christmas Day. For the next five years, the women lived and raised the twins together. E.G. referred to her mother and K.M.’s parents as the twins’ grandparents, K.M.’s sister and brother as the twins’ aunt and uncle, and K.M.’s nieces as their cousins. In addition, various school forms listed both K.M. and E.G. as the twins’ parents.

The couple separated in 2001 and E.G. moved to Massachusetts with the twins. In March of 2001, K.M. filed a
petition to establish a parental relationship with the girls. In the petition, K.M. alleged that she is the twins’ biological parent because she donated her egg to E.G. Furthermore, K.M. argued that she did not intend to donate her ova, but rather provided her ova so that E.G. could give birth to a child to be raised by them together. E.G. moved to dismiss the petition on the grounds that K.M. donated her ovum under a written agreement by which she surrendered any claim to children born of this donation. E.G. asserted that K.M. donated her ova to E.G. with the understanding that E.G. would be the sole parent. In April 2001, K.M. filed a motion for custody of and visitation with the twins.

The trial court granted E.G.’s motion to dismiss finding that K.M. voluntarily signed the ovum donor form, thereby relinquishing and waiving all rights to claim legal parentage of any children who might result from the in vitro fertilization procedure. The court concluded that K.M. had no legal relationship to the girls, despite the facts that she was actually the girls’ biological mother, she had lived with the twins since their birth, was named as a parent on school records, and shared expenses with E.G. Consequently, K.M.’s petition for visitation was denied.

The Court of Appeals affirmed the judgment, ruling that K.M. did not qualify as a parent. The appellate court noted that K.M.’s status is equivalent to that of a sperm donor. The Court of Appeals further concluded that if the parties had changed their intentions and wanted K.M. to be the girls’ parent, their only option was adoption. Although the court recognized that the interest of the twins was disserved by severing their relationship with K.M., it refused to apply the best interest standard. The court stated that best interest analyses are limited to custody and visitation issues and could not be applied to a parentage question.

The California Supreme Court acknowledged that K.M. was a parent of the twins because she supplied the ova that produced the children. In addition, the court noted that Family Code § 7613 (b) which provides that a man is not a father if he provides semen to a physician to inseminate a woman who is not his wife does not apply because K.M. supplied her ova to impregnate her lesbian partner in order to produce children who would be raised in their joint home. K.M. did not intend to simply donate her ova to E.G., but rather provided her ova to her lesbian partner so that E.G. could give birth to a child that would be raised by them together in their shared home. The court also mentioned that even if Family Code § 7613 (b) applied to women who donate ova, the statute did not apply under the circumstances of this particular case.

Although the trial court found that K.M. signed a form surrendering all rights to claim legal parentage of any children who might result from the in vitro fertilization procedure, the California Supreme Court noted that such a waiver does not affect a determination of parentage. The court stated that parents cannot restrict or abolish a child’s right to support simply by signing an agreement. The California Supreme Court held that a woman who supplies ova to be used to impregnate her lesbian partner, with the understanding that the resulting child will be raised in their shared home, cannot relinquish her responsibility to support that child. In addition, the court determined that a purported waiver cannot effectively cause that woman to surrender her parental rights.

The California Supreme Court, reversing the lower court’s decision, concluded § 7613(b) did not apply to the present situation and that K.M. was also the twins’ parent based upon her genetic relationship to the twins.

The NACC joined the Northern California Association of Counsel for Children in an amicus curiae brief supporting the interests of twin sisters M.G. and K.G. The amici argued that the court failed to protect the interests of the twins by not appointing counsel or guardian ad litem to them, nor recognizing them as parties to the action.

Dependency/TPR
Evidentiary Standard


The Arizona Supreme Court granted review to consider whether to apply a clear and convincing standard or a preponderance of evidence standard of proof in determining whether terminating parental rights was in the best interest of the child.

Arizona statute mandates that grounds for termination are established by clear and convincing evidence. However, the court had not previously considered either the evidentiary standard to be applied or the question of the constitutionally required standard of proof in a best interest inquiry.

Arizona’s termination of parental rights statute does not provide a standard of proof to be applied to the best interest inquiry nor does it define the term “grounds for termination” therefore the court looked to legislative intent. The separate clauses of the statute mandated the court to first consider “grounds for termination” and then “best interest.” The statute also states that the standard of proof for grounds of termination must be met by clear and convincing evidence. The court found that this statutory structure demonstrated a legislative intent to apply the clear
Throughout these amendments, the inquiries into grounds for termination and the child's best interest remained separate. Due to this and the fact that initially the legislature left it to the court's discretion to consider the child's best interest, the court concluded that the child's best interest must be established by a preponderance of evidence standard.

Next, the court considered whether a clear and convincing standard applied to the best interest inquiry would violate the “fundamentally fair” component of the Due Process Clause of the Fourteenth Amendment as fundamental rights are affected by parental severance. The court applied the three-prong test set out in Matthews v. Eldridge, 424 U.S. 319, 335 (1976) to the inquiry into the requisite standard of proof for holding that termination of parental rights is in the best interest of a child.

First the court considered private interests and concluded that the child's interests diverge from those of a parent's whose actions were sufficient to qualify for termination by clear and convincing evidence. The interest of keeping the child safe must then be balanced against the parental interest.

The court then considered whether the use of a higher standard of proof would diminish the risk of a faulty deprivation of fundamental rights. In its analysis, the court noted that the focus in the best interest inquiry is on the interests of the child—separate from the interests of the parent. This is distinguishable from the fact-finding stage where the focus is on the parents. During the fact-finding proceeding of termination hearing, the heightened standard of proof helps to ensure against erroneous findings of parental incompetence and serves the societal interest of maintaining familial relationships when appropriate. In contrast, putting the burden of a heightened standard of proof in the best interest inquiry would place the risk of a faulty holding regarding the child's best interest upon the child.

The third prong of the Matthews test required the court to consider the states parens patriae interest in ensuring the child's safety through termination of parental rights. Again, the court concluded that use of a clear and convincing standard would be counter-productive to the states' interest in protecting the child.

The court concluded that consideration of the three Matthews factors does not lead to a requisite imposition of a clear and convincing standard to the best interest inquiry; rather a preponderance of evidence standard would result in an adequate allocation of risk. The court of appeals' decision regarding this issue was vacated. The court affirmed the trial court's holding on the statutory grounds for termination, and the finding as to best interests was reversed. The case was remanded to the trial court to apply the proper standard of proof, preponderance of evidence, to the best interest inquiry.

The trial court's order was vacated and jurisdiction was relinquished.

Child Abuse Investigations / Probable Cause Required


Susquehanna County Services for Children and Youth, (department) filed a motion to compel appellants, R.G. and S.G., to cooperate with a child abuse investigation. R.G. and S.G. refused to allow a case worker to conduct a home visit to investigate allegations of medical neglect of their child. Absent a hearing, an order was entered directing R.G. and S.G. to comply with the home visit. Subsequently, a home visit was conducted. The department concluded that the allegations were unfounded and the investigation was closed. R.G. and S.G. appealed on the merits of the case citing the “high public importance” of the issues raised.

R.G. and S.G.’s contention that the trial court's order, issued without an opportunity to be heard, violated their due process rights and that the order further violated their rights under the Fourth Amendment against unreasonable searches and seizures.

The court concluded that these issues implicated fundamental constitutional rights. Therefore although the home visit was conducted and the case was closed, the issue was not moot and it was heard on the merits of the appeal.

R.G. and S.G.’s primary argument was that because the department had not filed a dependency petition, the trial court lacked jurisdiction to enter its order. The court disagreed with this position because under the Child Protective Services Law (CPSL), county agencies are mandated to investigate each report of child abuse and these agencies are statutorily obligated to implement any regulations necessary, including at least one home visit during the investigation, to carry out the CPSL.

As jurisdiction was determined to be proper, the court addressed R.G. and S.G.’s Fourth Amendment claims. The department argued that because a home visit was required by the agency’s regulations and a child's safety was at issue, the Fourth Amendment did not apply. Since this was a case of first impression for the court, it cited two federal cases, Good v. Dauphin County Social Services for Children and Youth, 891 F.2d 1087 (3rd Cir. Pa. 1989) and Walsh v. Erie County Dept. of Job and Family Services, 240 F. Supp. 2d 731 (N.D. Ohio 2003), in which claims were brought against caseworkers who entered the plaintiffs’ homes without a warrant. Much like the case at hand, the caseworkers in Good argued that child abuse cases are not governed by well-established legal principles and they are entitled to qualified immunity.

In Walsh the defendants contended that
the Fourth Amendment did not apply to social worker employees. Both federal courts flatly rejected these arguments and likewise this court held that the Fourth Amendment does, in fact, apply to the CPSL and subsequently to the agencies governed by the CPSL.

R.G. and S.G. further argued that the statute itself was unconstitutional. The statute requires the department to make at least one home visit during the investigation and if that home visit is refused and they are unable to determine whether the child is at risk, the department must petition the court. As the statute does not state that the court must grant the department’s petition regardless of the facts, the court determined that the statute was facially constitutional.

However, in the instant case, the court agreed with R.G. and S.G.’s argument that the department did not allege facts sufficient for the trial court to enter its order. In its petition, the department stated that a search warrant must be issued because a home visit is statutorily required. The department’s only relevant fact alleged was a Child Line referral for possible medical neglect. The trial court gave R.G. and S.G. ten days to comply with the order which further illustrated that the child’s life was not in imminent danger and this was not an emergency situation. The court then vacated the trial court’s order on the grounds that it lacked facts sufficient for a finding of probable cause.

In regard to R.G. and S.G.’s position that the court’s order violated their due process rights since it was issued without notice and a hearing, the court compared it to a criminal matter. The court held that the due process clause of the Fourteenth Amendment did not require the trial court to give R.G. and S.G. notice and an opportunity to be heard before granting an order for a home visit. Assuming probable cause for a home visit does exist, the court noted that it is unreasonable to direct courts to give notice and schedule a hearing in every instance of alleged child abuse/neglect.

**Juvenile Justice / Interrogations**


Jerrell was arrested upon suspicion of his involvement in an armed robbery. He filed a motion to suppress his written confession on the grounds that it was involuntary. This motion was denied, and Jerrell was subsequently adjudicated. Following his adjudication, he filed a post disposition motion seeking a new trial, again claiming that his confession was involuntary. The circuit court denied the motion. Jerrell appealed, maintaining that his confession was involuntary, and the appellate court affirmed the circuit court. The case came before the Wisconsin Supreme Court for review of the decision affirming the delinquency adjudication and the denial of Jerrell’s post disposition motion.

Jerrell, age fourteen, was arrested at his home, taken to the police station, booked, and placed in an interrogation room. There, he was handcuffed and left alone for two hours. He was then read his Miranda Rights and the interrogation began. Over five and a half hours after the interrogation began and eight hours after Jerrell was taken into custody, he signed an admission prepared by one of the detectives. Throughout the day, Jerrell’s numerous requests to call his parents were denied.

The court was presented with three separate issues. The court first considered whether Jerrell’s confession was involuntary. Next, the court turned to whether it should adopt a per se rule excluding in-custody admissions from children under sixteen years of age if they were denied the opportunity to confer with a parent or an adult. The last issue was whether the court should adopt a rule requiring that all juvenile interrogations be electronically recorded by police.

In its inquiry into the first issue, the court used the principles of law governing voluntariness of confessions from Hoppe, 2003 WI 43, 261 Wis. 2d 294, 661 N.W. 2d 407. Hoppe mandates a consideration of the totality of circumstances around the confession implementing a balancing test of the defendant’s personal characteristics against the tactics used by law enforcement. In its application of the test, the court first considered Jerrell’s personal characteristics. The court noted that Jerrell’s young age, low average range of intelligence, and limited prior engagement with police (he had never been adjudged delinquent) all weighed as strong factors against the voluntariness of his confession. Secondly, the court examined the tactics used by police in their interrogation and found that the denial of Jerrell’s requests to call his parents, the lengthy custody and interrogation, and the fact that Jerrell was not allowed any outside support by a lawyer, parent, or interested adult all demonstrated coercive conduct. Thus, the court determined based on the totality of the circumstances that Jerrell’s written confession was involuntary.

In regards to the second issue, the court analyzed whether it had the authority to adopt a per se rule excluding confessions from children under sixteen made in custody. Although it recognized that supreme courts are given flexible and broad authority, the court declined to invoke that authority by means of adopting a per se rule which would change law enforcement practices. Instead, the court chose to uphold the “totality of circumstances” test and stated a warning to law enforcement that they are statutorily obligated to make an “immediate attempt” to contact parents when a juvenile is taken into custody.

Lastly, the court considered whether to adopt a rule requiring all juvenile interrogations be electronically recorded— noting that Alaska and Minnesota have already enacted such a rule. The court stated that it has the authority to adopt rules that govern the admissibility of evidence and that this rule would have the effect of making unrecorded interrogations inadmissible evidence. In contrast, the mere interrogation of juveniles without a recording would not be rendered illegal by the rule and thus the court would not be changing law enforcement practices.

In its decision to adopt a per se rule requiring the recording of juvenile interrogations, the court outlined the following advantages. First, the recordings will help to rid of evidentiary conflicts stemming out of memory lapses and thus supply the court with a record of the interrogation that is more accurate and reliable. Second, the rule would provide a house-keeping function by reducing the amount of disputes
over issues of voluntariness and Miranda rights. Third, it would protect those police wrongfully accused of coercive and/or wrongful behavior. Fourth, it would allow police to focus more on the witness and less on administrative duties such as taking notes and would, in turn, better the interrogation itself. Lastly, the rights of the accused will be protected by adoption of the rule.

The court reversed the decision of the court of appeals on the ground that Jerrell's written confession was found to be involuntary; declined to adopt a per se rule excluding interrogation of children under sixteen that were declined to consult an adult; and adopted a rule that all future in-custody interrogations of juveniles be electronically recorded.

**State's Rights / Metabolic Testing**


The Nebraska Supreme Court affirmed the decision of the District Court for Douglas County which held that the State had a compelling state interest in the screening of infants for metabolic diseases. Further, the court affirmed the lower court order's requiring the parents to immediately submit their child for metabolic screening.

The Anayas challenged Nebraska Revised Statute § 71-159 which requires that all infants born in the state be screened for various metabolic diseases as specified by the Department of Health and Human Services (DHHS). Section 71-159 also provides that if a physician is not present at the birth, the person registering the birth is responsible for ensuring that the screening process occurs. At the time the statute was challenged, DHHS regulations required that the screening be performed within 48 hours of birth or within 48 hours of registration of the birth.

On July 11, 2003, the Anayas gave birth to a daughter at home without a physician present. The birth was reported to the DHHS on July 17. Upon discovering that the child had not undergone metabolic testing, the DHHS notified the Anayas of the statutory requirements and the details of the screening process. Metabolic testing requires that a small amount of blood be drawn from the infant's heel. The Anayas refused to submit their daughter for metabolic screening because the testing process was in direct conflict with their "religious beliefs that life is taken from the body if blood is removed from it and that a person's lifespan may be shortened if blood is drawn."

Douglas County brought action seeking to compel the Anayas to comply with the statute requiring metabolic testing. In response, the Anayas filed a motion for judicial exemption from prosecution and dismissal of the petition. The Anayas alleged that the statute violated the Fourteenth Amendment and that the issue was moot because they were unable to comply with § 71-159 because DHHS regulations required that the metabolic screening occur within 48 hours of the registration of the birth. At the time of the hearing, 70 days had passed since the birth was registered.

The District Court for Douglas County held that the Anayas' religious beliefs did not outweigh the State's compelling interest in screening newborn children for metabolic diseases. In addition, the court noted that although screening for metabolic disease is most effective if conducted at birth, it was not too late to administer the test. Thus, the court rejected the Anaya's argument that the issue was moot due to their child's age and ordered that they submit their child for metabolic screening in compliance with § 71-159.

On appeal, the Anayas assert that the District Court incorrectly held that the State's compelling interest outweighs their right to free exercise of religion as guaranteed by the First Amendment and their fundamental rights as parents. The Anayas argue that because the challenged statute raises a free exercise of religion claim and a substantive due process claim, the court should review § 71-159 under strict scrutiny. The Anayas rely on Employment Div., Ore. Dept. of Human Res. v. Smith to support their claim that a statute which raises a free exercise claim along with a claim of violation of another constitutional right must satisfy strict scrutiny requirements in order to pass constitutional muster.

The Supreme Court of Nebraska rejected this argument noting that in Smith, the Supreme Court did not hold that strict scrutiny analysis is required merely because more than one constitutional right might be at issue. The Nebraska court concluded that a party may not force the government to overcome the burden of meeting a heightened scrutiny standard by simply asserting that the challenged statute violates more than one constitutional right. Therefore, the District Court properly analyzed § 71-159 under a rational basis review.

In regards to the First Amendment challenge, the Supreme Court of Nebraska addressed the question of whether the challenged law is neutral and has general application. The court noted that a law is neutral and of general applicability if it does not seek to impose upon or limit practices because of their religious motivations, and if it does not selectively impose burdens only on practices motivated by religious beliefs. The Court concluded that the challenged statute is neutral because it is generally applicable to all infants born in Nebraska and does not discriminate as to which newborns must undergo metabolic screening. Furthermore, there is no evidence that the State had a non-secular purpose in enforcing § 71-519.

In addressing the Anayas' assertion that § 71-519 raises concerns regarding parental substantive due process, the Nebraska court noted that the U.S. Supreme Court has never held that statutes which impose on parental rights to childrearing as guaranteed under the Fourteenth Amendment must withstand strict scrutiny analysis.

Applying a rational basis standard, the Nebraska Supreme Court stated that the district court properly concluded that § 71-519 is constitutionally valid. At trial, evidence was presented concerning the effects of the metabolic diseases identified through the early screening process. In addition, early diagnosis allows for immediate treatment thereby minimizing the likelihood of death and disability in children. The State argued that the health and safety concerns of the child were of particular concern, as were the potential social burdens created by children who were not identified and treated. The
Court concluded that the State had an interest in the health and welfare of all children born in Nebraska and the purpose of § 71-159 is to protect such health and welfare, thus, satisfying the rational basis analysis. The Anayas also assert that the trial court erred in determining that the issue was not moot. The Nebraska Supreme Court held that the assertion that the case is moot because testing did not occur within 48 hours after birth was registered is without merit. The Court noted that one cannot refuse to comply with a testing requirement within a particular timeframe and then claim that the case is moot because the time has passed. Although the benefits of screening and subsequent treatment are reduced if testing occurs beyond the 48-hour timeframe, additional damage can be prevented by compliance with § 71-159. The Court concluded that there is value to metabolic screening beyond the first 48 hours of life which is vital to the health and welfare of the child, thus the issue of whether metabolic testing can be required pursuant to a state statute is not moot.

The California Supreme Court held that appellate counsel has the burden to seek dismissal of an appeal based on his or her assessment of the child’s best interests. The court noted that in every case appellate counsel has the authority to seek dismissal based on the attorney's and the client’s evaluation of what is in the client’s interest. The court concluded that this is also true in dependency cases. It distinguished the issues presented from Zeth S. where the court held that appellate courts cannot consider post-judgment evidence on appeal. First, the court noted that appellate rules authorize motions to dismiss and the courts consider post-judgment evidence in the context of the motion. Second, the issues involved in a motion to dismiss are narrow, and lastly motions to dismiss can be beneficial and expedite proceedings.

Dependency / Role Of Counsel In Appeals

California Supreme Court Holds That Appellate Counsel Can Only File A Motion To Dismiss Dependency Appeal After Consultation With And Consent From Child Client Or Child’s Guardian ad Litem. In re Josiah Z., 36 Cal. 4th 664; 31 Cal. Rptr. 3d 472; 2005 Cal. LEXIS 8148 (CA Supreme Court, 2005). Previous decision reported in the Spring 2004 Guardian.

The California Supreme Court granted review of this case to consider the scope of appellate counsel’s authority in handling a child's dependency appeal. The court specifically considered two issues: 1) what role a child’s appellate counsel plays in challenging the juvenile court’s evaluation of a child’s best interests; and 2) under what circumstances does appellate counsel have the authority to investigate whether a child’s appeal should be dismissed.

The underlying case involved two-year old Josiah and his infant brother G.Z. The children were removed from their parents’ home when G.Z. tested positive for drugs at birth and placed in the custody of the Kern County Department of Human Services (department). In July 2003, the department terminated reunification services and set a permanency hearing. The children’s guardian ad litem asked for a hearing on placement with the paternal grandparents. The court denied the request based on information from the department showing that the paternal grandparents had criminal records and neglected their own children. The guardian ad litem appealed the court’s decision on behalf of the children. The court then appointed an appellate attorney.

Appellate counsel requested funds to investigate whether the dependency appeal was in the children's best interests. The Court of Appeals denied appellate counsel’s request because it could not find any statutory or case law supporting appellate counsel’s claim of authority. Ultimately, the Court of Appeals held that appellate counsel does not have authority to dismiss a child’s appeal based on his or her assessment of the child’s best interest. Appellate counsel appealed the decision and the California Supreme Court granted review to consider the scope of appellate counsel’s authority in a dependency appeal.

The California Supreme Court first considered whether appellate counsel has the authority to seek dismissal of an appeal based on his or her assessment of the child's best interests. The court noted that in every case appellate counsel has the authority to seek dismissal based on the attorney's and the client’s evaluation of what is in the client’s interest. The court concluded that this is also true in dependency cases. It distinguished the issues presented from Zeth S. where the court held that appellate courts cannot consider post-judgment evidence on appeal. First, the court noted that appellate rules authorize motions to dismiss and the courts consider post-judgment evidence in the context of the motion. Second, the issues involved in a motion to dismiss are narrow, and lastly motions to dismiss can be beneficial and expedite proceedings.

The court then considered when appellate counsel can seek dismissal based on a child's best interests. The court reiterated that dismissal required consent from the client. It then discussed the role of the guardian ad litem in dependency cases. The court noted that a guardian ad litem is required by the Child Abuse Prevention and Treatment Act (CAPTA) in all juvenile dependency proceedings. Since an appeal is an extension of a juvenile dependency proceeding, the court read CAPTA to require a guardian ad litem on appeal. In the context of an appeal, the guardian ad litem has a duty to authorize appellate counsel to file a motion to dismiss when it is in the best interest of the child and the child is not capable of providing authorization. Therefore, appellate counsel can only file a request for dismissal after consultation with and authorization from the child and his or her guardian ad litem.

Next, the court turned to the question of whether appellate counsel may seek funds to investigate a motion to dismiss based on the child's best interests. The court distinguished between the authorization to file a motion to dismiss and what steps appellate counsel can take to investigate the best interests of the child in order to advise the child and guardian ad litem. The court rejected the Court of Appeals finding that appellate counsel does not have authority to request funds to investigate what is in the best interest of the child. The court noted that there may be circumstances where appellate counsel will need to visit the child to determine whether a motion to dismiss is in the child’s best interest. Appellate counsel, however, is charged with considering the cost of delay in the proceedings. Furthermore, the court noted that appellate counsel has the burden to establish that funds to visit the child are necessary, and when the guardian ad litem is opposed to filing a motion to dismiss the request for funds will only be granted in rare circumstances.

The court concluded, however, that in this case the guardian ad litem opposed dismissing the appeal and appellate counsel failed to demonstrate that the funds were necessary. It affirmed the Court of Appeals denial of appellate counsel’s request for funds, but remanded the case without prejudice.
Thank you to NACC Board Members Donna Wickham Furth and Jan Sherwood for drafting an amicus curiae brief on behalf of the NACC and Northern California Association of Counsel for Children in this case.

Juvenile Justice / Sentence Enhancers


The Virginia Court of Appeals reversed the decision of the Circuit Court for the City of Virginia Beach convicting the defendant of petit larceny.

At trial, the appellant, Bryan Conkling, stipulated before the judge that he took a PlayStation 2, valued at less than $200, from a relative at a family reunion. Prior to this event, Conkling had been convicted of grand larceny and had five juvenile larceny adjudications. On appeal, Conkling argued that his prior juvenile adjudications could not be used as a predicate for enhancing his punishment for the theft.

The appellate court noted that Code § 18.2-104 is a recidivist statute that increases the sentence of a person convicted of a third larceny-type offense by changing a petit larceny offense to a misdemeanor for a class 6 felony.

However, the Virginia court further acknowledged that juvenile proceedings focus on rehabilitation rather than punishment. Ultimately, the goal of the juvenile courts is crime prevention. In Roper v. Simmons, the United States Supreme Court emphasized three reasons for handling juvenile offenders differently than adult offenders. First, juveniles have an understandable lack of maturity and an underdeveloped sense of responsibility which often leads to impulsive actions and decisions. Second, juveniles have a heightened susceptibility and vulnerability to negative influences and outside pressures. Third, a juvenile's character and personality traits are not as well formed and are more transitory than those of adults.

The Commonwealth argued that the previous case of Carter v. Commonwealth imposes a different result. In Carter, the court upheld a trial court's ruling that the mandatory sentencing provision of Code § 18.2-308.2 was implicated by a prior juvenile adjudication. Code § 18.2-308.2 provides, in pertinent part, that "it shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of twenty-nine who was found guilty as a juvenile fourteen years of age or older..." The Virginia Court of Appeals emphasized that because the statute expressly included offenders with prior juvenile adjudications, the court determined that the sentencing enhancement provisions of Code § 18.2-308.2 were triggered by Carter's prior juvenile adjudications.

However, Code § 18.2-104 does not mention juvenile adjudications. Thus, the Virginia court noted that the specific exclusion of juvenile adjudications in § 18.2-104 indicates that the state legislature did not intend to include juvenile larceny adjudications as predicate crimes for enhancement under the statute. The court concluded that if the legislature intended for juvenile adjudications to be used as sentence enhancers, it would be clear in the code.

The Virginia court acknowledged that its analysis is strengthened by earlier Attorney General Opinions. In addressing whether prior juvenile adjudications may be considered as "convictions" for the purpose of Code § 18.2-104(b), the Attorney General stated that juvenile adjudications are considered to be civil proceedings and that a determination of guilty on a petition charging delinquency shall not function to enforce any of the burdens normally imposed by criminal convictions.

Based on this analysis, the Virginia Court of Appeals held that juvenile adjudications may not be used to increase a sentence. Consequently, the defendant's felony conviction was reversed, and the matter was remanded with instructions for the trial court to impose a sentence consistent with a misdemeanor conviction.

Due Process / CHINS Proceedings


The court considered what procedure is required at a six month review hearing of children adjudicated a child in need of services. The appellant, Angela, argued that she is entitled to an evidentiary hearing at the six-month review hearing and that the judge must make findings of fact on the issue. The State granted direct appellate review to consider the issue.

In November 2002, eleven-year old Angela was adjudicated a child in need of services (CHINS) based on habitual truancy. She waived her right to a jury trial and admitted to truancy. In January 2003 she was adjudicated a CHINS. Initially Angela was placed in the continued custody of her mother on the conditions that she attended school and cooperated with the department of social services (department). Within a few weeks the court received a report from the juvenile court clinic and the judge made a dispositional order committing Angela to the custody of the department and placing her outside her mother’s home.

Over the next year Angela was readjudicated a CHINS two more times.

In February 2004, Angela’s case was reviewed for a third time. No evidence was presented and no one from Angela’s school was present. The only testimony came from the department reporting that Angela was in compliance, but requesting that she continue in out of home placement. Counsel for Angela asked the juvenile court to dismiss the matter for failure to prosecute. The judge concluded that the purpose of the original order had not been accomplished and ordered that Angela continue in out of home placement. Angela appealed the juvenile court’s decision.

On appeal, Angela contended that at six month review hearings the petitioner is required to prove beyond a reasonable doubt that the child continues to be in need of services. The court first considered the scope of the hearing. The State general laws require a hearing to determine if a child is in need of services and an adjudication
of CHINS must be proved beyond a reasonable doubt. The statute also specifies the types of dispositional orders a judge can make following a CHINS adjudication. Additionally, a hearing is required before an order is extended. At the hearing the juvenile court must determine whether the purposes of the dispositional order have been accomplished or if it should be extended for another period not to exceed six months. The court emphasized that the review hearing is not a readjudication but a hearing to reconsider the dispositional order. It concluded, therefore, that the same standard of proof is not required at the review hearing as is required for the initial adjudication.

Next, the court looked to the type of hearing required. Angela argued that the statute required at least an evidentiary hearing. The court noted that before extending a dispositional order the judge must hold a hearing and make findings. The court had previously recognized that CHINS proceedings intrude on a child’s liberty interest and therefore it took due process into consideration. The court recognized that since Angela was placed out of home she had a substantial fundamental liberty interest at stake. It also noted that the juvenile court had erroneously deprived Angela of her liberty interest, since the order was extended without giving Angela an opportunity to challenge the department’s position. Furthermore, it recognized that an evidentiary hearing would provide the juvenile court the facts on which the department relied on for its recommendation. It compared the CHINS hearings to extend dispositional orders to probation proceedings, noting that both hearings review a judge’s order. Based on this analysis, it concluded that an evidentiary hearing is necessary but a fair preponderance of the evidence standard is consistent with due process requirements. The court vacated the order extending the dispositional order and remanded the case to juvenile court.

The NACC joined the Committee for Public Counsel Services in an amicus curiae brief to the Massachusetts Supreme Judicial Court. Amici argued that the child is entitled to an evidentiary hearing where the petitioner must prove beyond a reasonable doubt that that child is still a “child in need of services” before a court may make findings and extend an initial six-month CHINS order. This position is reflected in the dissent, which disagreed with the court’s conclusion that a fair preponderance of the evidence standard was sufficient. The dissent noted that decisions made at extension hearings can have drastic impacts on the child’s and potentially the parent’s liberty interest, and therefore, the juvenile court’s decision should be based on clear and convincing evidence.

Thank you to NACC Member Susan Dillard, from the Committee for Public Counsel Services for drafting the amicus curiae brief in this case.

**CASE UPDATES**

**Child’s Attorney Given Absolute Immunity**


The Connecticut Supreme Court affirmed the judgment of the Appellate Court that the court-appointed counsel for a minor child in a marriage dissolution action was entitled to quasi-judicial immunity. However, the Supreme Court arrived at a different conclusion in regards to the level of immunity to which the attorney is permitted. The Court held that an attorney appointed to represent a child is entitled to absolute immunity for actions taken during, or activities necessary to, the performance of tasks that are vital to the judicial process.

On appeal, the Connecticut Supreme Court noted that immunity encourages honorable judicial decision-making by eliminating a judge’s concern that litigants may initiate legal action in response to unfavorable rulings. The Court further acknowledged that under limited circumstances judicial immunity has been extended to shield other officers of the court. In addition, the Court stated that although qualified immunity is usually adequate to protect most judicial officials in the performance of their functions, courts have occasionally extended absolute immunity to quasi-judicial officers.

To determine whether court-appointed counsel for a minor child is entitled to qualified or absolute immunity, the Connecticut Supreme Court applied a three factor test adopted from the United States Supreme Court. In applying this test, the Connecticut court determined that court-appointed counsel for minor children perform functions that are comparable to other court officers who are entitled to absolute immunity. The court noted that a substantial likelihood exists that subjecting children’s attorneys to personal liability will expose them to sufficient pressure or coercion to interfere with the performance of their tasks, and the legal system contains adequate procedural safeguards to shield against improper conduct by a minor’s attorney. Based on this analysis, the Court concluded that court-appointed counsel for minor children should be entitled to absolute, quasi-judicial immunity in the performance of those functions that are essential to the judicial process.

The Connecticut Supreme Court also affirmed the lower court’s decision that the plaintiff, Mr. Carrubba, acting on behalf of his son as next of friend, lacked standing to sue on behalf of the minor child. The Court noted that when determining whether a person is the proper party to bring an action on behalf of a minor child it is appropriate for the court to consider whether that person’s interests are adverse to those of the child. In Whitmore v. Arkansas, the Supreme Court set forth two requirements necessary to achieve next friend status. First, a person must be dedicated to the best interests of the person who he or she intends to represent in a legal matter. Second, a person must provide a sufficient explanation as to why the real party in interest cannot represent his or her own interest.

The Connecticut Supreme Court acknowledged that although parents typically meet both of these requirements, custody disputes create a notable exception to this generality. In custody cases, parents often lack the ability to adequately represent or convey the children’s best interest when those interests are in conflict with his or her own desires. Accordingly, the court determined that the plaintiff lacks...
Restraining Order Enforcement


The U.S. Supreme Court overruled the 10th Circuit Court ruling that gave a Colorado mother, Ms. Gonzales, the right to police enforcement of a restraining order. The Court concluded that for Due Process purposes, the mother did not have a property interest in the enforcement of the restraining order against her estranged husband.

In July 2003 Ms. Gonzales three daughters were abducted by her estranged husband from the family’s front yard. Police ignored her repeated request to enforce the restraining order against her estranged husband. Ultimately, the father killed his three daughters and himself. The district court granted the town’s motion to dismiss. An en banc majority of the 10th Circuit found that under Colorado statute the mother had a protected property interest in the enforcement of the restraining order and that she had been denied due process. The 10th Circuit’s decision was based on its conclusion that a Colorado statute clearly established the state legislature’s intent to require police to enforce restraining orders.

The U.S. Supreme Court granted certiorari and reversed. The Court noted that the procedural component of the Due Process Clause does not protect everything that might be considered a government benefit. Colorado law has not created a personal entitlement to enforcement of restraining orders. The Court pointed out that police discretion is a well-established principle. Although Colorado law instructs police to use every reasonable means to enforce a restraining order it does not mandate enforcement. The Court reasoned that even if Colorado law mandated enforcement, that would not mean that Ms. Gonzales was entitled to enforcement and furthermore, if the state statute created an entitlement to enforcement of the restraining order it was not clear that the entitlement would constitute a property interest for due process purposes. It reversed the 10th Circuit’s decision and concluded that Ms. Gonzales did not have a due process protected property interest in the enforcement of a court issued restraining order.

Guardian Cases — Notice to Readers

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

Cases reported in The Guardian are identified by NACC staff and our members. We encourage all readers to submit cases. If you are unable to obtain the full text of a case, please contact the NACC and we will be happy to furnish NACC members with a copy at no charge.

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The NACC network can be a powerful tool for achieving good outcomes for children and families in the court system, especially as we reach across state lines in service of our clients. A Michigan-Mississippi NACC connection recently teamed up a Mississippi lawyer with the University of Michigan Law Student Clinic resulting in the reunification of a child and his mother. Michigan law students from the Child Advocacy Law Clinic, Liz Wei and Megan Whyte represented a Michigan mother whose estranged husband turned her three-year-old son over to Mississippi child protection authorities. The husband told the authorities that he could not care for the boy and did not know where the mother was. Once the mother discovered what had happened she was in touch with the child protection workers nearly daily, but they would not share basic information about where the child was or copies of court pleadings, reports, or orders. There were no charges of neglect against the mother. Using the NACC Resource Center and online member database, Meg and Liz identified Mississippi attorney and NACC member, Patricia Smith, who agreed to represent the mother. Ms. Smith met their mutual client at the courthouse and using the motion, memorandum of law, and the client’s affidavit prepared by the law students, successfully persuaded the court to return the child to his mother’s custody. The law students later reflected: “As we later learned, the Mississippi protective service workers had never notified the court that they were in touch with the mother and all the court documents still said the mother was unknown and un-located. The court documents even had handwritten notes already suggesting the child as a candidate for adoption. If this mother had never had the Child Advocacy Law Clinic or Ms. Smith to represent her, we can only guess at what might have happened.”

Federal Policy Update

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

Federal Appropriations for FY 2006

On June 16, the House passed the FY 2006 appropriations bill that funds the Department of Justice, including the Office of Juvenile Justice and Delinquency Prevention. A similar DOJ funding bill was approved by the Senate Appropriations Committee on June 23. Then, on June 24, the House passed the FY 2006 appropriations bill that funds the Departments of Education and Health/Human Services. A similar Ed/HHS funding bill was approved by the Senate Appropriations Committee on July 14. No Senate floor consideration of these funding bills has yet been scheduled. Relevant provisions of the bills include the following:

- In the Ed/HHS funding bill, there is generally a nominal funding freeze (not even increased funding to account for inflation) on most programs, such as after-school, child care, and the Child Abuse Prevention and Treatment Act programs, with some small nominal increases in Head Start and in the House level for Independent Living Education/Training Vouchers, and some actual cuts from last year’s levels, such as in the Senate level for Promoting Safe and Stable Families (which is reduced from $404 million to $395 million).
- The DOJ funding bill, which includes juvenile justice and delinquency prevention funding, largely rejects the President’s proposed levels (which included about a 50% cut in federal JJDP funding, with elimination of the Juvenile Accountability Block Grant). Instead, funding levels are much closer to current nominal levels, except for the Senate level for the Juvenile Accountability Block Grant, which is reduced from $55 million to $49 million.
Budget Reconciliation Coming Soon
In September, Congress will begin moving forward “budget reconciliation” bills that will include:

I. Mandatory spending cuts that total at least $34.7 billion over five years (due to be determined by the specified Committees by September 16), including:

- In the 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.

- In the 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.

- In the 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. Tax cuts that total up to $70 billion over five years (due to be reported by Finance/Ways & Means Committees by September 23).

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, though a temporary extension of TANF/CCDBG, through September 30, was enacted on July 1. TANF CCDBG reauthorization legislation may get wrapped into “budget reconciliation” legislation in the fall - if it does, meaningful child care funding increases are less likely.

Gangs Legislation
On May 11, the House 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. 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, and no markup is scheduled at this time.

Juvenile Accountability Block Grant Reauthorization
On July 27, the House Judiciary Committee approved H.R. 3402, the Department of Justice authorization bill, which includes a four-year reauthorization of the Juvenile Accountability Block Grant program, including some modest language improvements to the JABG program. The bill also reauthorizes the Violence Against Women Act. The Senate Judiciary Committee is expected to take action on DOJ authorization legislation in the fall.

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.

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Head Start Reauthorization
In May, the House Education and Workforce Committee marked up H.R. 2123, and a week later, the Senate Committee on Health, Education, Labor and Pensions marked up S. 1107, both of which are bills to reauthorize the Head Start early education program for disadvantaged kids. The legislation includes some language to improve Head Start access for foster children. Thankfully, neither bill includes state block grants that had been in the House-passed bill in the last Congress (that bill never got enacted).

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. Rep. Portman has since left Congress (to be U.S. Trade Representative), so Rep. Cannon has taken over as the lead House sponsor. A Senate companion bill is expected to be introduced in the fall by Senators Brownback, Biden, Specter and DeWine.
- On February 15, H.R. 823 (Rep. Ramstad) and S. 380 (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 to state agencies (child welfare or juvenile justice), for the purposes of obtaining mental health services for those children.
- On May 10, Sen. Clinton and Sen. Snowe introduced the Kinship Caregiver Support Act (S. 985), which provides funding for kinship navigator programs, provides a IV-E support option for kinship care, and provides notice to relatives of children entering foster care. No action has yet been scheduled.
- On July 20, Sen. DeWine introduced S. 1429 (with Sen. Murray), as well as S. 1430, S. 1431 and S. 1432; these bills provide for improved post-secondary education opportunities for homeless and foster youth, as well as post-secondary education loan forgiveness for: child protection social workers; attorneys who represent low-income clients in family/domestic relations courts; and child care providers and preschool teachers. No action on this legislation has been scheduled (the Senate Health, Education, Labor and Pensions Committee will consider these proposals in the context of its mark-up of Higher Education Act reauthorization legislation, which has not yet been scheduled).
- On July 29, Rep. Platts, Rep. Davis (IL) and Rep. Osborne introduced H.R. 3628, 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). This legislation is the House companion to Sen. Bond’s S. 503, a bill of the same name introduced in early March. No action on this legislation has been scheduled.

Don’t forget: you can download copies of any Congressional bill, Committee Report, House or Senate floor statement, and up-to-date bill status information through: http://Thomas.loc.gov

Children’s Law News

News
Hurricane Katrina Response
The U.S. Department of HHS Children’s Bureau has provided special funding to the three federal child welfare resource centers to respond to the needs of children and families affected by Hurricane Katrina. These organizations are the ABA Center on Children and the Law, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges. While the NACC did not receive any of this funding, our services are still needed. The NACC is ideally situated to access and organize the national workforce of child welfare attorneys and the NACC has offered to support these efforts. Please take a few minutes and visit the following websites. If you are interested in assisting in any of the ways indicated, please email the NACC at: advocate@NACCchildlaw.org and indicate how you would like to be involved and/or your specific ideas on what our response should look like. Please indicate “Katrina Response” on the email subject line and be sure to include all your contact information. We will gather the information, communicate with our resource center colleagues, and get back with you ASAP. There are significant numbers of children and families already in the child welfare system that need our help. Unfortunately, the tragedy itself is also likely to create a new population who may enter the system or need services to stay out of the system. Thank you for your willingness to serve. ABA Center on Children and the Law:
NACC 2005 National Children’s Conference

The NACC 28th National Children’s Law Conference, *State of the Art Advocacy for Children, Youth, and Families* was held in Los Angeles August 25–28, 2005. Over 500 advocates from around the country attended. Look for the conference report in the next (year-end 2005) *Guardian*. Conference manuals may be purchased from the NACC (see order form in this issue). Complete audio recordings and power point presentations of the conference are also available on CD ROM and MP3 formats at http://www.actsconferenceproducts.com/merchant/nc.asp.

NACC 2005 Outstanding Legal Advocacy Award

Angela Orkin, Esq., Executive Director of the Florida Statewide Guardian ad Litem Office has been named the recipient of the NACC 2005 Outstanding Legal Advocacy Award. The NACC presents the award annually to individuals and agencies that make important contributions to the welfare of children through legal advocacy. After four years as a corporate attorney, Ms. Orkin joined the staff of Kid’s Voice in Pittsburgh, Pennsylvania where she represented approximately 500 abused, neglected, and abandoned children in juvenile court. In her current position as Executive Director of the Florida Statewide Guardian ad Litem Office, Angela Orkin has transformed the practice of law for children in Florida. Her accomplishments exemplify that statewide systemic change can be achieved to improve legal representation for children.

Nominations for the 2006 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 the NACC office by August 1, 2006.

NACC 2005 Law Student Essay Competition

Winner - KELSI BROWN CORKRAN, *Free Exercise in Foster Care: Defining the Scope of Religious Rights for Foster Children and Their Families*, University of Chicago School of Law and Harris School of Public Policy Studies.

2nd Place Recipient - JAVIER BARRAZA, *Violation of the Rights of Unaccompanied Immigrant Children in the United States, and the Need for Appointed Counsel*, University of California at Davis, King Hall School of Law.


The NACC is accepting essays for the 2006 Law Student Essay Competition. The winning essay will be published in the 2006 Children’s Law Manual, and the winner will be given $1,000, a one-year NACC membership and a scholarship to the 2006 conference in Louisville, KY. 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 can be submitted electronically to the NACC at advocate@NACCchildlaw.org or mail essays (hard copy and disk) with contact information to the NACC office by August 1, 2006.

Conferences & Trainings

The 10th Annual Rocky Mountain Child Advocacy Training Institute (RMCATI) was held in Denver this spring. Over 50 lawyers spent 5 days in intensive trial skills training sponsored by the NACC.

Leslie Heimov (standing) RMCATI Faculty Trainer of the Children’s Law Center of LA works with students at RMCATI X this spring.

11th Annual Rocky Mountain Child Advocacy Training Institute, Louisville, Colorado. May 22–26, 2006. Contact the NACC for information on registration—members receive a significant discount!

NACC 29th National Children’s Law Conference, Louisville, Kentucky, October 12–15, 2006. Abstracts will be accepted until March 1, 2006. Forms are available by contacting the NACC at 888-828-NACC.

Publications

The NACC Certification Manual, *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect and Dependency Cases*, is now available. 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. Call Bradford Publishing directly to order at 800-446-2831 or go to: www.bradfordpublishing.com. NACC members receive a 20% discount.

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.

On Our Own as a Young Adult: Self-Advocacy Case Studies, by Betsy Krebs and Paul Pitcoff, Jist Life. 1-800-648-JIST.

Myers on Evidence in Child, Domestic and Elder Abuse Cases, by John E.B. Myers, Aspen 1-800-234-1660.


Clinical Evaluations for Juveniles’ Competence to Stand Trial: A Guide
NACC – Publications

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<th>Other Publications</th>
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<td>□ The Child's Attorney Ann Haralambie Pub ABA (1993) $49.00</td>
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Community Programs Manager,
The Children’s Network of Solano County, Fairfield, CA. The Community Programs Manager is responsible for oversight and management of agency’s countywide, community-based family support initiatives serving families and children. The Community Programs Manager is responsible for facilitating collaborative efforts, supervising Children’s Network’s Family Support Division staff and their work on specific initiatives, and leading associated grant writing and other sustainability efforts. Submit resume, letters of recommendation including one from a previous employer and a copy of college transcripts to: The Children's Network of Solano County, 2320 Courage Drive, Suite 107, Fairfield, CA 94533 Phone: 707-421-7229 Fax: 707-421-6495.

Please send children's law news and advocacy job openings to: The Guardian, 1825 Marion Street, Suite 242, Denver, CO 80218
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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.

California
The NACC extends a special thank you to all of the members of the LA Affiliate of the NACC and Northern California Association of Counsel for Children for their support of the NACC 28th National Children’s Law Conference. For more information about NACC California affiliates, contact:
Brenda Dabney, President
Los Angeles Affiliate of the NACC
323-980-5737
dabneyb@ela.org

Christopher Wu, President
Northern California Association of Counsel for Children
415-865-7721
Christopher.wu@jud.ca.gov

Georgia
The Office of the Child Advocate and Georgia Association of Counsel for Children recently hosted the third annual Guardian Ad Litem Conference in Savannah, Georgia for attorneys, CASAs and lay guardians representing children in juvenile court deprivation proceedings. The conference was attended by 100 advocates representing children and highlights included presentations by Howard Davidson of the American Bar Association Center on Children and the Law and Carol Emig, Executive Director of the Pew Commission on Foster Care. Stay tuned for more news from Georgia as we learn the full impact of the Kenny A. lawsuit/settlement on the future of representation of Georgia’s children. For more information, contact:
Dee Simms, President
Georgia Association of Counsel for Children (GACC)
478-757-2670
dsimms@gachildadvocate.org

Georgia advocates may also be interested in the following publication: Georgia’s Responsibilities Toward Children in Foster Care: A Reference Manual. Barton Child Law and Policy Clinic, Emory Law School, 404-727-6664; childlaw@law.emory.edu.
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