THE GUARDIAN

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IN THIS ISSUE

NACC

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National Association of Counsel for Children

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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

Vol. 30, No. 3 ▪ Summer 2008

A Message from the New NACC Vice President / Managing Attorney

PETER KOELLING, JD, PH.D. CANDIDATE

NACC – Vice President / Managing Attorney

Let me begin by saying how pleased I am to become a part of the National Association of Counsel for Children and to offer a brief introduction of myself. I hope that I bring a unique set of skills and experience that will help the organization grow and prosper. I have been an attorney for 23 years, licensed in both Texas and Colorado. I have worked for courts for more than a decade. I was on the Executive Committee of the Texas Court Improvement Program at its inception and recently staffed the Colorado Court Improvement Program training grant. As court administrator in San Antonio, I started and oversaw the juvenile justice education program and helped create a dedicated Children's Court. Recently, I returned to graduate school and am working to complete my Ph.D. in the fields of public administration and public policy.

I joined the NACC in May of this year. The organization was already in the midst of preparation for the 31st National Conference in Savannah, Georgia. The conference had a record number of attendees, 672. At that conference it was impossible not to feel the sense of strength and dedication that those who attended have towards serving children and families in times of crises. It is this type of passion that makes the work of the NACC so exciting.

If you attended our conference, you know not only how good and beneficial the conference itself is, but how great it is to be surrounded by so many people interested in the same goals. This sense of a community working together is what the NACC is trying to achieve. The fact that our members are spread throughout the country makes this difficult, but we are trying to bring everyone together. One of the ways we are doing this is through our new Web application for our website. It offers us an opportunity to build an online community. If you have not visited our website recently please take time to do so, I think you will be pleased. Also take the time to update your membership profile and explore the ways you can use it.

Community support is going to be vital for all of us as we face the future. As the economy slows governmental revenues decrease. Both the child welfare and juvenile justice systems will be under financial pressure. Already those in Georgia and California and other states are having to address the budgetary impacts from lower state receipts this year. Even when the economy takes a turn for the better, state budgets will lag behind due to the propensity of state budgeters to adhere to conservative estimates of revenue.

The child welfare and juvenile justice systems are already under resourced. We need to work together individually and collectively to make certain that these systems are not harmed by further cuts. It is vitally important that they do not take the brunt of disproportionate budget cuts as they have in the past. Although short term cuts may help balance the current year budget, they do not make sense in the long term. Early intervention with real and effective services for families and children can help to avoid far greater expenses in the future. Our children and our taxpayers deserve wise investments. Working together we may be able to avoid detrimental impacts. Please keep a watchful eye out for the impact your state's budgetary process may have on resources for children and families. Please let us know how we can help you advocate for these systems.

▲ NACC Conference Staff, from left, **Mary Roth** (Volunteer); **Danielle Luber, JD candidate** (NACC Legal Intern); **Christy Norcross** (Conference Coordinator); **Peter Koelling, JD, Ph.D. candidate** (NACC Vice President / Managing Attorney); **Daniel Trujillo** (NACC Membership Director); **Jennifer Trujillo** (Volunteer); **Anne Kellogg, JD** (NACC Staff Attorney / Resources Director); **Maureen Martin, JD** (NACC Staff Attorney / Certification)

▲ **Abeni Cultural Arts Dance Group**, from Savannah, Georgia, performing during Opening Night of the NACC Conference.

◀ **Andrew Bridge, JD**, author of *Hope's Boy: A Memoir*, signing books at the NACC Conference after speaking about The Foster Care System in America.

Cases

Constitutional Law / Death Penalty

The United States Supreme Court Holds that the Eighth Amendment Bars Louisiana from Imposing the Death Penalty for Child Rape Where the Crime did not Result, and was not Intended to Result, in the Victim's Death. Kennedy v. Louisiana, 128 S. Ct. 2641 (2008).

A stepfather called 9-1-1 to report that his stepdaughter, L. H., then eight-years-old, had been raped. He told the 9-1-1 operator that, upon hearing loud screaming, he ran outside and found L. H. in the side yard. Stepfather told the operator that two neighborhood boys dragged L. H. from the garage to the yard, pushed her down, and raped her. Stepfather claimed he saw one of the boys ride away on a blue 10-speed bicycle.

L. H. was transported to the hospital. An expert in pediatric forensic medicine testified that L. H.'s injuries were the most severe he had seen from a sexual assault. L. H.'s injuries required emergency surgery.

Both L. H. and Stepfather reported that L. H. had been raped by two neighborhood boys. However, eight days after the crime, Stepfather was arrested for the rape.

The prosecution presented the following evidence, later credited by the jury: Stepfather gave inconsistent descriptions of the bicycle; investigators found a bicycle matching Stepfather's description, and Stepfather identified it as the same bicycle, yet its tires were flat, it did not have gears, and it was covered in spider webs; the grass on the side yard, where Stepfather reported the rape occurred, was mostly undisturbed, which was inconsistent with a rape having occurred there; there was blood on the underside of L. H.'s mattress, indicating that the rape occurred in her bedroom; Stepfather made telephone calls on the morning of the rape — one to his employer, indicating he was unable to work that day, the second to a colleague, inquiring as to how to remove blood from carpet, and the third to a carpet cleaning company, requesting urgent assistance in removing bloodstains; Stepfather did not call 9-1-1 until about an hour and a half later.

Approximately four months after the rape, L. H. reported to her mother that Stepfather had raped her.

The State charged Stepfather with aggravated rape of a child and sought the death penalty. After a jury trial, Stepfather was found guilty and the jury unanimously determined that Stepfather should be sentenced to death, under a Louisiana state statute authorizing capital punishment for the rape of a child under 12 years of age. The Supreme Court of Louisiana affirmed. The United States Supreme Court granted certiorari.

The issue before the U. S. Supreme Court was whether the Constitution bars the state from imposing the death penalty for the rape of a child where the crime did not result, and was not intended to result, in death of the victim. The Court held that a death sentence for one who raped but did not kill a child, and who did not intend to assist another in killing the child, was unconstitutional under the Eighth and Fourteenth Amendments. Specifically, the Court held that the Eighth Amendment prohibits the death penalty for this offense. Thus, the Court held that the Louisiana statute — which authorizes capital punishment for the rape of a child under 12 years of age — was unconstitutional.

The Court based its decision both on consensus and its own independent judgment. The Court reviewed the authorities informed by contemporary norms, including the history of the death penalty, current state statutes and new enactments, and the number of executions since 1964. After consideration of such factors, the Court concluded that there is a national consensus against capital punishment for the crime of child rape.

The Court found that there would be serious negative consequences of making child rape a capital offense. Further, the Court held that the death penalty is not a proportional punishment for the rape of a child.

The Court noted that the death penalty must be reserved for the worst of crimes and limited in its application. In most cases, justice is not better served by terminating the life of the perpetrator rather than confining the perpetrator and preserving the possibility that the perpetrator and the system will find ways to allow the person to understand the enormity of his/her offense.

The Court reversed the judgment of the Supreme Court of Louisiana and remanded the case for further proceedings consistent with its opinion.

Family Law / Genetic Testing

The New Hampshire Supreme Court Holds that New Hampshire Must Give Full Faith and Credit to Other States' Acknowledgements of Paternity. In re Gendron, 2008 N.H. LEXIS 64 (N.H. 2008).

In December 2004, Jody gave birth to a child in Massachusetts. Both Jody and Kevin signed a Voluntary Acknowledgement of Parentage ("Acknowledgement"), acknowledging that they were the child's biological parents.

Two-and-a-half years later in New Hampshire, Kevin obtained a domestic violence protective order against Jody and filed a petition seeking custody of the child. In response, Jody asserted that Kevin was not the child's biological father and requested paternity testing.

The trial court in New Hampshire ordered Kevin to submit to genetic marker testing. The court reasoned that it was in the child's best interests

to know his parentage and have rapid closure on the issue.

Kevin moved for reconsideration, arguing that his paternity was established in Massachusetts when he and Jody signed and filed the Acknowledgement and that New Hampshire was required to give full faith and credit to the paternity determination that occurred in Massachusetts.

New Hampshire statute RSA 168-A:2, II provides, "the courts of this state shall give full faith and credit to a determination of paternity made by another state, whether established by court or administrative order, through voluntary acknowledgement of paternity, or by operation of another state's laws."

Under Massachusetts General Law, the signed Acknowledgement constitutes a "legal document with the same binding effect as a court judgment of paternity." Either signatory may rescind the Acknowledgment within 60 days of the date of signing by filing a petition in the probate and family court in which the child and one of the parents resides. Either signatory may also challenge the Acknowledgment on the basis of fraud, duress, or material mistake of fact within a year of signing by petitioning a court to order genetic marker testing.

When Jody signed the Acknowledgment, she, by her own volition, accepted Kevin as the child's biological father. Accordingly, Kevin's paternity was established in December 2004, was never rescinded or challenged, and therefore must be recognized by the New Hampshire courts as a final judgment.

The issue before the Court was whether the doctrine of res judicata barred the mother from challenging the paternity of the child's father.

Jody argued that the signed Acknowledgement did not produce a final judgment, but rather created only a rebuttable presumption of paternity. She asserted that she may challenge that presumption pursuant to New Hampshire statute RSA 5-C:28, III (Supp. 2007), which permits a court of competent jurisdiction to resolve a challenge to an affidavit of paternity after the 60-day recession period.

Although New Hampshire law reads that "a court may order genetic paternity testing upon the motion of any party or upon its own initiative," a mother, child, and putative father are required to submit to such testing only in civil actions "in which paternity is a constant and relevant issue."

Here, the Court found that the unchallenged Acknowledgement established Kevin's paternity. Genetic marker testing was thus irrelevant to a ruling on the father's request for custody.

The New Hampshire Supreme Court noted that a child's best interests should generally be considered in determining whether to order genetic marker testing; it disagreed with the trial court's assessment of what was best for the child. The Court cited *Tregoning v. Wiltscek*, 782 A.2d 1001, 1004 (Pa. Super. Ct. 2001) in reasoning that "if a certain person has acted as the biological parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he has known all is life is not in fact his father."

Dependency / Caseworkers' Entitlement to Qualified Immunity

The United States Court of Appeals for the Tenth Circuit Holds that Caseworkers are not Entitled to Qualified Immunity on "Danger Creation" Claims Predicated on the Discouragement of the Reporting of Additional Incidents of Abuse. Briggs v. Johnson, 2008 U.S. App. LEXIS 8816 (10th Cir. 2008).

Kelsey suffered bruises and a broken clavicle. The Oklahoma Department of Human Services confirmed that Kelsey's injuries were caused by her mother's physical abuse. Kelsey was thereafter removed from her mother's custody and placed in the care of her paternal grandmother. Two months later, the state court permitted unsupervised visits between Kelsey and her mother. One week after the unsupervised visits commenced, Kelsey experienced substantial physical abuse. In October 2005, Kelsey died while in the physical care of her mother.

Raymond Briggs, Kelsey's father, sued several DHS employees. Briggs alleged that the caseworkers violated Kelsey's Fourteenth Amendment substantive due process rights by failing to adequately investigate abuse allegations, by discouraging the reporting of additional incidents of abuse, and by otherwise failing to protect Kelsey.

The district court held that Briggs sufficiently alleged a Fourteenth Amendment violation under the "danger creation" theory based on allegations that specific caseworkers discouraged the reporting of additional abuse against Kelsey. The issue before the Tenth Circuit was whether caseworkers are entitled to qualified immunity on danger creation claims.

In *Deshaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189 (1989), the Supreme Court established that state actors have no constitutional due process obligation to protect an individual from the violent acts of third parties. However, the Tenth Circuit in *Seamons v. Snow*, 84 F.3d 1226 (10th Cir. 1996) recognized a "danger creation" exception to this general rule when state officials themselves created the risk that caused the harm. To argue a danger creation claim, plaintiff must plead facts that show: (1) defendant created the danger or increased victim's vulnerability to the danger; (2) victim was a member of a limited and specifically definable group; (3) defendant's actions put victim at substantial risk of serious, immediate, and proximate harm; (4) the risk was obvious or known; (5) defendant acted recklessly in conscious disregard of the risk; and (6) defendant's conduct shocks the conscience.

The caseworkers argued that Briggs failed to allege facts that demonstrate

affirmative conduct on their part created or increased the danger to Kelsey. The caseworkers also argued that their alleged conduct was not conscience shocking.

As to the caseworkers' first claim, the Tenth Circuit relied on factually similar *Currier v. Doran*, 242 F.3d 905 (10th Cir. 2001), wherein the Court found that a social worker violated a child's substantive due process rights when she instructed a mother "to stop making allegations of abuse." The social worker's instruction satisfied the requisite affirmative conduct necessary to support a danger creation claim because it "interfered with the protective services which would have otherwise been available" to the child.

In the present case, the caseworkers argued that the *Currier* social worker's affirmative act of "instructing" was distinguishable from their inaction of "discouraging" the continued reporting of abuse through failing to respond to repeated reports. However, the Court determined that the obvious interpretation of Briggs's allegation was that the caseworkers affirmatively dissuaded reports from individuals interested in Kelsey's welfare.

As to the caseworkers' second claim — that the caseworkers' conduct was not conscience shocking — the Court noted that the DHS employees were aware that Kelsey did not suffer a single injury while she was in the care of her paternal grandmother and while only supervised visits were authorized. The Court also noted that during the two months after unsupervised visits commenced, Kelsey suffered bruising on her legs and face, leg contusions, a closed head injury, and fractures of both tibias. On this record, the Court could not discern a single justification or policy consideration that supported the discouragement of continuing reporting of abuse. In sum, the Court found that the caseworkers' conduct could be construed as "conscience shocking."

The Court held that the caseworkers failed to assert a valid entitlement to qualified immunity, therefore affirming the district court's denial of the caseworkers' motion to dismiss.

Constitutional Law / Fourth Amendment

The Seventh Circuit Holds that the Scope of Consent to Interview Does Not Extend to a Search of an Individual's Body. Michael v. Gresbach, 526 F.3d 1008 (7th Cir. 2007).

The Bureau of Milwaukee Child Welfare ("Bureau") received a child abuse report, alleging that Ian was abused by his stepfather. Dana Gresbach, a caseworker with the Bureau, was assigned to the case for investigation. Gresbach went to Ian's private school to interview Ian and his stepsister, Alexis.

When Gresbach arrived at the school, she met with the school principal. The principal allowed Gresbach to interview the children. Gresbach did not ask the principal for permission to physically examine Ian or Alexis for injuries; Gresbach believed, albeit incorrectly, that she was not obliged to ask for such permission. Gresbach interviewed each child, individually. During each interview, Gresbach inspected the children's bodies, under their clothes, for any injuries. Because Gresbach observed no injuries, the case was closed.

The parents and stepparents of the children brought suit, alleging (1) that the caseworker subjected the children to unreasonable searches and seizures, in violation of the Fourth Amendment, (2) that the defendants violated the family's rights to familial relations under the Fourteenth Amendment; and (3) that the defendants violated all of the family's rights to procedural due process under the Fourteenth Amendment.

The district court granted partial summary judgment in favor of the Plaintiffs, finding that Gresbach violated the children's Fourth Amendment rights. The court noted that although Gresbach obtained consent from the principal to conduct the interviews, Gresbach did not have consent to conduct the searches of the children's bodies. The court further found that those rights were clearly established at the time of the searches, in that a reasonable caseworker would have known that she lacked authority to conduct such a search. Accordingly, the court denied Gresbach's motion for summary judgment under qualified immunity. Gresbach appealed.

In affirming the district court's ruling, this Court relied on factually similar *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003), wherein the court found that under established Fourth Amendment principles, a private school and its students had a reasonable expectation of privacy on the school's premises, and that the caseworkers' warrantless search of the premises and seizure of the child in order to conduct an interview for a child abuse investigation, without the consent of the child's parents or school officials, was presumptively unreasonable.

The Fourth Amendment, as applied to the states through the Fourteenth Amendment, protects individuals against unreasonable searches and seizures of their persons, homes, and effects, without a warrant supported by probable cause.

Physical examinations conducted by caseworkers, including visual examinations of a child's body normally covered by clothing, implicate Fourth Amendment concerns. Thus, the Court found that the caseworker's visual observations of the children's bodies, underneath their clothes, were "searches."

The Fourth Amendment prohibits only those searches that are unreasonable. Gresbach's searches of the children's bodies took place on private property, and *Heck* held that a warrantless search conducted on private property is presumptively unreasonable, so long as the person has a reasonable expectation of privacy in the premises on which the search took place.

The issue was whether it was reasonable for Gresbach to believe that the principal's consent to interview the children included consent to conduct a search of the children's bodies. The Court found that it was not reasonable, based on Gresbach's representations to the principal that she needed to "see the children" to investigate a child abuse allegation, that the principal need not be present for the interview, and that the principal allowed Gresbach to speak to the children privately. A reasonable person would not have interpreted this to mean that the principal authorized Gresbach to search the children's bodies.

Gresbach conducted a search of each child on private property without consent, a warrant or probable cause, or exigent circumstances. As a result, the Court found that Ian and Alexis's Fourth Amendment rights to be free from unreasonable searches were violated.

Nevertheless, an official performing discretionary functions is immune from suit if her conduct could reasonably have been thought consistent with the rights she is alleged to have violated. The Court noted that the threshold question is whether, taken in the light most favorable to the plaintiffs, the facts show that the official's conduct violated a constitutional right. *Finsel v. Cruppenink*, 326 F.3d 903, 906 (7th Cir. 2003). "Only if the answer is affirmative does the court inquire whether the official enjoys qualified immunity." *Hosty v. Carter*, 412 F.3d 731, 733 (7th Cir. 2005). If a constitutional violation could be made out on a favorable view of the parties' submissions, the next step is to ask whether the right was "clearly established." *Id.* To be "clearly established," the contours of the right must be sufficiently clear that a reasonable official would understand that what she is doing violates that right. *Landstrom v. Illinois Dept. of Children and Family Services*, 892 F.2d 670, 675 (7th Cir. 1990). If the right was "clearly established," the official is not entitled to qualified immunity.

The Court noted that despite a caseworker's participation in constitutionally impermissible conduct, the caseworker may nevertheless be shielded from liability for civil damages if the caseworker's actions did not violate clearly established rights of which a reasonable person would have known.

Plaintiffs argued that the *Heck* decision precludes the caseworker's understanding of her rights to conduct a child abuse investigation. The Court agreed, finding that a reasonable caseworker would have known that conducting a search of a child's body under the clothes, on private property, without consent or the presence of any other exception to the warrant requirement of the Fourth Amendment, is in direct violation of the child's constitutional right to be free from unreasonable searches.

The Court acknowledged the sensitive nature of child abuse investigations and recognized that officials may make a search or seizure under exigent circumstances, where they have reason to believe life or limb is in jeopardy. However, the Court noted that caseworkers are not exempt from adhering to basic Fourth Amendment principles under non-exigent circumstances and to do so would be imprudent. Further, the Court held that requiring a caseworker to act in accordance with basic Fourth Amendment principles is not an undue burden on the child welfare system.

Family Law / Same-Sex Marriages

The California Supreme Court Holds that Language in the California Family Code that Limits the Designation of Marriage to a Union "Between a Man and a Woman" is Unconstitutional. In re Marriage Cases, 43 Cal. 4th 757 (Cal. 2008).

On May 15, 2008, the Supreme Court of California issued a landmark decision involving same-sex marriages. The Court held that provisions of the California Family Code that limit marriage to a union between a man and a woman were unconstitutional and thus must be stricken from the Code, thereby allowing same-sex couples to obtain marriage licenses in California.

The proceeding involved the consolidated appeal of six cases. The legal issue was not whether it would be constitutionally permissible for the state to limit marriage only to opposite-sex couples while denying same-sex couples any opportunity to enter into an official relationship. Similarly, the Court noted that the issue was not to decide whether, *as a matter of policy*, the officially recognized relationship of a same-sex couple *should* be designated a marriage rather than a domestic partnership (or some comparable term).

Instead, the issue was the constitutional validity of the provisions of the California marriage statutes that drew a distinction between opposite-sex couples and same-sex couples and excluded the latter from access to the designation of marriage. In other words, the question the Court addressed was whether the failure to designate the official relationship of same-sex couples as marriage violated the California Constitution.

The Court held that statutes that treat persons differently based on their sexual orientation must be analyzed under strict scrutiny. Under the strict scrutiny standard, in order to demonstrate the constitutional validity of the statute, the state must establish (1) that the state interest intended to be served by the differential treatment is a *compelling* state interest, and (2) that the differential treatment is *necessary* to serve that compelling state interest.

The Court noted two reasons for which such statutes require a strict scrutiny analysis. First, sexual orientation must be viewed as a suspect classification for purposes of the state's Equal Protection Clause. The court explained that immutability was not invariably required. Instead, the most important factors were historically invidious and prejudicial treatment and a current recognition by society that the characteristic in question generally had no relationship to the ability to perform or contribute to society. Second, the assignment of different designations impinges upon same-sex couples' state constitutional right to marry, as well as the fundamental privacy interest of same-sex couples.

In determining the underlying issue, the Court made the following findings: First, the California Constitution guaranteed same-sex couples the same substantive constitutional rights as opposite-sex couples, including the right to choose one's life partner. Secondly, the language of the provisions posed a serious risk of harm to same-sex couples and their children, in that the separate and different designation denies same-sex couples and their children equal dignity and respect, which is a core element of the fundamental right to marry. Third, the separate and different designation was likely to reflect an official view that same-sex commitments are of lesser value than opposite-sex commitments, and gay persons are of lesser value than heterosexual persons, and thus may be treated differently.

After considering the above factors, the Court found that the purpose underlying differential treatment of opposite-sex and same-sex couples embodied in California's current marriage statutes was not a *compelling* state interest for purposes of the Equal Protection Clause. Further, the Court found that excluding same-sex couples from the designation of marriage was not *necessary* in order to grant them all the protections afforded to opposite-sex, married couples. Thus, the Court concluded that to the extent the current California statutory provisions limited marriage to opposite-sex couples, these statutes violated the state Equal Protection Clause and were therefore found by the Court to be unconstitutional.

The Court held that language that limits the designation of marriage to a union "between a man and a woman" is unconstitutional and must be stricken from the statute, and the remaining statutory language must be understood as making the designation of marriage available both to opposite-sex and same-sex couples.

The court reversed the judgment of the court of appeal and remanded the matter for further action. The Court held that the Plaintiffs were entitled to the issuance of a writ of mandate, directing the appropriate state officials to take all actions necessary to effectuate the ruling in order to ensure that county clerks and other California officials, in performing their duty to enforce the marriage statutes, apply those provisions in a manner consistent with the decision of this court.

Dependency / Termination of Parental Rights

The Minnesota Supreme Court Holds that in Order to Terminate the Rights of a Parent who has not Personally Inflicted Egregious Harm on a Child, the Court Must Find that the Parent either Knew or Should Have Known that the Egregious Harm Occurred. In re T.P. 747 N.W.2d 356 (Minn. 2008).

Daycare providers and family members, including Mother, began noticing bruising on the child, then five months old. Father admitted that the child was in his direct care when the injuries occurred. Father explained that the child rolled off the bed into a dresser. However, the pediatrician who examined the child testified that the parallel bruising pattern correlated to hand-print or finger marks. The physician also testified that the child suffered "classic metaphysical fractures" to her left wrist and ankle, most likely attributed to shaking, twisting, or bending of the limbs.

The district court terminated Mother's and Father's parental rights to their daughter under the Egregious Harm Provision of the Minnesota Child Protection Statute, holding that in light of the harm experienced by the child, it was contrary to her best interests to be in her parents' care. The court of appeals affirmed.

The Minnesota Egregious Harm Provision (Minn. Stat. § 260C.007, subd. 1(b)(6)) states that a court may terminate parental rights if it finds "a child has experienced egregious harm in the parent's care which is of a nature, dura-

tion, or chronicity that indicates a lack of regard for the child's wellbeing, such that a reasonable person would believe it contrary to the best interest of the child to be in the parent's care."

Mother appealed, arguing that the district court erred in terminating her parental rights because the child was in the sole care of Father when her daughter suffered the egregious harm. Mother contended that the Egregious Harm Provision should be interpreted strictly to require that injury to a child occur at the hands of or in the physical presence of a parent.

The issue before the Court was to determine the meaning of the Egregious Harm Provision's undefined and unexplained phrase "in the parent's care."

The Child Protection Statute uses the term "care" in other termination provisions. Subsection 1(b)(2) permits termination of the rights of a parent who has failed to provide the child with "necessary food, clothing, shelter, education, and other care and control." Subsection 1(b)(4) permits termination of the rights of a parent who is unable to "care appropriately for the ongoing physical, mental, or emotional needs of the child." The Court concluded that these provisions indicate a legislative intent that the term "care" be used as a broad reference to legal or physical custody. Care includes parental provision for the well-being of a child in ways that do not require physical presence.

Therefore, because the child's fractures and facial bruising occurred when Mother and Father's relationship was intact, the child resided with both parents, and Mother acknowledged that she and Father were the child's primary caretakers, the record supported the district court's finding that the child was in Mother's care when the egregious harm occurred.

The Court further interpreted the provision's language and found that termination of parental rights requires more than a child experiencing egregious harm in the parent's care. It also requires a finding that the harm "indicates a lack of regard for the child's wellbeing." Where a parent has not personally inflicted the egregious harm, it is impossible for the "nature, duration, or chronicity" of that harm to indicate a lack of regard for the child's well-being unless the parent was aware of the harm and its cause. Hence, to terminate the rights of a parent who has not personally harmed the child, a court must first find that the parent either knew or should have known that the child experienced the harm.

Because none of the district court's findings addressed the "knew or should have known" standard, the Court reversed the court of appeals' affirmation of the termination of Mother's parental rights and remanded the case to the district court.

Dependency / Parental Rights

The Texas Supreme Court Finds the Texas Department of Family and Protective Services' Removal of Children From the FLDS Ranch was Not Warranted. In re Texas Dep't of Family and Protective Servs., 51 Tex. Sup. Ct. J. 967 (Tex. 2008).

On April 3, 2008, the Texas Department of Family and Protective Services removed over 400 children from the Yearning for Zion ranch in Texas, after receiving a report that a sixteen-year-old girl was being physically and sexually abused. The Ranch, which is associated with the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS), is located on the outskirts of Eldorado, Texas.

The Department removed 468 children from the Ranch without a court order. The removal was based on evidence that twenty females had become pregnant between the ages of thirteen and seventeen and that the "pervasive belief system" of the FLDS groomed male children to be perpetrators of sexual abuse and female children to be victims of sexual abuse. The Department considered this situation "the largest child protection case documented in the history of the United States."

The Department filed Suits Affecting the Parent-Child Relationships (SAPCRs), requesting emergency orders to remove the children and limit the parents' access to the children. The trial court appointed the Department temporary sole managing conservator.

Thirty-eight mothers petitioned the court of appeals for review by mandamus, seeking the return of their children.

Under Tex. Fam. Code Ann. § 262.201(b)(1), the Department of Family and Protective Services may only take possession of a child without a court order if it can demonstrate with sufficient evidence to satisfy a person of ordinary prudence that: (1) there was a danger to the physical health or safety of the child; (2) there was an urgent need for protection of the child that required immediate removal of the children from their parents; or (3) the Department made reasonable efforts to eliminate or prevent the children's removal from their parents.

The court of appeals determined that the removal of the children was not warranted. The court reasoned that the existence of the FLDS belief system that "condones polygamous marriage and underage females having children" does not, by itself, place children of FLDS parents in physical danger. Children are only endangered by the imposition of particular tenets of the system. The Department failed to offer any evidence as to whether the Mothers or anyone in their households were likely to subject their pubescent female children to underage marriage or sex.

The court also found that the Department's evidence showing that the children were being raised by individuals who allow minor females to marry and give birth did not establish danger that is "urgent" or "immediate" with respect to the children. Evidence that children may someday have their physical health and safety threatened is not proof of the *imminent* danger requisite to warrant removal prior to litigation on the issues. The court found no evidence that the Department made reasonable efforts to ascertain whether some measure short of removal would have eliminated the perceived risk to the children.

The question before the Texas Supreme Court was whether the court of appeals correctly concluded that the Department failed to meet its burden of proof under the Texas Family Code. The Court found that the court of appeals correctly vacated the trial court's orders continuing the Department's custody.

The Department argued that the appellate court's decision left the Department unable to protect the children. The Court noted that the Texas Family Code gives courts broad authority to protect children short of separating the children from their parents. Trial courts may restrain a party from removing a child beyond a geographical area, order the removal of an alleged perpetrator from a child's home, and issue orders to assist the Department with investigations.

Three Justices dissented in part. They opined that the unilateral power of the Ranch's religious leader, "Uncle Merrill," to decided when and to whom pubescent girls would marry, combined with the evidence of extremely young mothers and pregnant "wives" and a pervasive belief system condoning such practices, was enough to support the trial court's finding that there was a danger to health and safety of all pubescent girls on the Ranch. The dissent agreed with the majority that there was no evidence of imminent danger to any pre-pubescent girls or boys.

The appeal to the Texas Supreme Court was interlocutory in nature and addressed only the issue concerning the removal of the children. The ruling of the Court did not result in the dismissal of the case.

NACC *Amicus Curiae* Update

In re Marc A. v. O.A., 2008 Cal. App. Unpub. LEXIS 2653 (Cal. App. 1st Dist. 2008).

NACC Board of Director Janet Sherwood, JD, CWLS, authored and filed a *amicus curiae* brief on behalf of the NACC and its affiliate, the Northern California Association of Counsel for Children (collectively, "NACC"), arguing that child clients are entitled to the same competent, zealous advocacy as any adult client, that a child's right to "competent" representation is based in both statute and the due process clause, and that the designation of the child's attorney as guardian *ad litem* does not authorize counsel to take a position adverse to that of his/her child client.

The juvenile court found that Mother excessively disciplined and emotionally abused the youngest four of her 18 children (Marc, Lucas, Frank and Erica, then aged 18, 17, 15 and 11). The court adjudged the four children as dependents and removed them from Mother's custody. The most compelling testimony, the court found, was that of adult daughters Sharon and Renee who testified that they were whipped with an extension cord when they were children, forty years prior. Sharon and Renee were unaware of any abuse of the younger children. Nonetheless, the court found Sharon's and Renee's testimony "tended to corroborate" that of Marc and Lucas, who recounted being disciplined in a similar manner.

Frank and Erica consistently maintained that they were happy at home, that whatever happened to their siblings did not happen to them, and that they wanted to be reunified with their mother. Further, Erica questioned how one attorney could represent her and Frank (who were "telling the truth") and also represent Marc and Lucas (who were "telling lies") and requested the court appoint separate counsel. The court denied the request. Thus, all four children were represented by the same attorney.

Mother argued that the court committed reversible error by denying Erica's motion for separate counsel. Frank and Erica joined this claim and argued that the court deprived them of their rights to effective representation and due process.

The children's attorney, Ms. Gillespie, opposed the result sought by Frank and Erica — namely, reunification with their mother — and any unmonitored contact between the children and their mother.

The statute at issue reads that a minor's counsel "shall not" advocate for a child's return to the home "if to the best of his or her knowledge, that return conflicts with the protection and safety of the child" (§317, subd. (c)). The *amicus* brief argued that the statute should be interpreted according to its plain meaning — that a minor's counsel *shall refrain from advocating that a child be returned to the home if she has reason to believe the child will be at substantial risk of serious injury there.* However, as the brief argued, the statute does *not* create a license for counsel to abandon her duty to ensure the integrity of the fact-finding process or to ensure the department meets its burden of proof, nor does it permit counsel to *oppose* the reunification her clients fervently desire. The brief argued that the result in this case denied the children due process, thereby mandating reversal.

The Court of Appeal of California, First Appellate District, Division Three, held that "the minor's counsel acted wholly consistent with her statutory duties under section 317, subdivision (e)" and any error was harmless because any other attorney appointed to represent the children "would have argued, as Gillespie did, that removal was in their best interests."

Nonetheless, the Court acknowledged the *amicus curiae* brief filed on behalf of the NACC. The Court noted that the *amicus* brief sought to establish the court erred by failing to appoint separate counsel. However, the court noted that the NACC relied not on California law, but on standards proposed by the American Bar Association (ABA) and its own organization. The ABA standards, as described by NACC, "call for client-directed advocacy based on the traditional duty of an attorney to zealously advocate the client's legal interests and require the attorney to represent the child's expressed preference," even if contrary to the child's best interests. (ABA Standards, Std. B-4.) The NACC standards, in turn, call for a modified version of the ABA standard, in which "the attorney is required to use the client-directed model of representation 'except where the child cannot meaningfully participate in the formulation of the client's position.'(ABA (NACC Revised) Standard B-4(2).) In that case, the attorney is to employ a substituted judgment approach or request the separate appointment of a traditional guardian *ad litem*, depending on the circumstances. (*Id.*, Standard B-4(1).)"

The Court declined the NACC's request to apply its own or the ABA's proposed standards to this case. The Court held that, whatever the NACC's merit may be, the NACC proposed standards conflict with California law. The Court stated that it must follow California law, as duly enacted by the California Legislature and interpreted by the courts, rather than the proposed standards of the two independent organizations. ■

Congratulations!
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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.

For more information on Child Welfare Law Attorney Specialty Certification, contact the NACC.
Call toll-free: **1-888-828-NACC**
Visit our website:
www.NACCchildlaw.org
Or email: **advocate@NACCchildlaw.org**

Federal Policy Update

by Miriam A. Rollin, JD
NACC Policy Representative, Washington, D.C.

Since the previous *Guardian* update, the House has passed a significant child welfare reform bill, and the Senate Finance Committee is scheduled to mark up similar legislation next week. Also since the last update, Congress finalized the FY09 Budget Resolution, but no appropriations bills have been enacted yet. In addition, Congress completed action on and the President signed into law the Higher Education Act reauthorization legislation (including loan-forgiveness for child welfare workers, among others).

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.

The House (on 3/13/08) and Senate (on 3/14/08) passed budget resolutions for FY09. The House/Senate Conference Report, resolving the differences between the two budget versions, was passed the House and Senate during the first week in June. It includes funding to restore the Administration's proposed budget cuts to children's programs. Then, the allocations were made to the appropriations Subcommittees, and spending bills for FY09 began to move forward. However, progress soon came to a halt over disputes on energy policy, and a "Continuing Resolution", to keep the government operating after FY09 begins on October 1 (in the absence of regular appropriations bill for FY09 having been enacted), seems inevitable. Such a Continuing Resolution is expected to fund most programs in the federal government at current funding levels until soon after the next President and Congress take office in early 2009.

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 December 29, 2007 as P.L. 110-173.

Action to Halt Implementation of Proposed Medicaid/ SCHIP Policies

On June 30, Congress overrode President Bush's veto, thereby enacting a war supplemental funding bill (H.R. 2642) that included moratoria on (halted implementation of) six of the Bush Administration's recent Medicaid regulations (which would restrict states' ability to get federal matching dollars for certain services, including rehabilitation services and targeted case management for children in foster care). The moratoria extend until April 1, 2009.

H.R. 2642 does NOT include the moratorium on the August 17, 2007 SCHIP directive, which would cap coverage of children at 250% of poverty and effectively prohibit "income disregards." This directive would clearly have had a negative impact the coverage of children in a number of states. In fact, some states would have been forced to rollback coverage, others would have covered children without federal support (thereby precluding other investments in kids), and others have already foregone expansions passed by their states waiting to see whether this directive would go into effect in August. However, in August, the Bush Administration announced that they would not take action against any states that were not in compliance with the SCHIP directive, thereby — at least temporarily — giving states relief on the issue.

A number of states have sued CMS on both the Medicaid regulations and the SCHIP directive, and those lawsuits are also proceeding.

Child Welfare Improvement Legislation

On 6/19/08, Ways and Means Subcommittee Chairman Jim McDermott introduced H.R. 6307, the "Fostering Connections to Success Act", and the bill was passed by voice vote on the House floor on 6/24/08. The bill: (1) provides for state-option kinship guardianship assistance payments for children, and authorizes the Secretary to make family connection grants to states; (2) allows state coverage of children in foster care after age 18 and up to age 21; (3) expands coverage of federal funds for the training of child welfare workers to include private agencies approved by the State; (4) requires a state child welfare services plan to provide for development of a plan for the ongoing oversight and coordination of health care services for any child in a foster care placement; (5) requires case plans to include a plan for ensuring the educational stability of the child in foster care; (6) authorizes Indian tribes to receive federal funds for foster care assistance; (7) requires reasonable efforts to place siblings together in foster care when removed from their homes; (8) extends the adoption incentives program for five years, and increases incentives payments for special needs adoptions and older child adoptions; (9) promotes the Adoption Tax Credit among foster parents who are adopting children in their care; and (10) fixes the foster care reimbursement rate in DC to equal the Medicaid rate. Similar legislation in the Senate, S. 3038 ("Improved Adoption Incentives and Relative Guardianship Support Act of 2008"), is expected to be considered in the Senate Finance Committee on September 10.

Child Safety in Boot Camps and other Private Residential Programs

H.R. 5876, the Stop Child Abuse in Residential Programs for Teens Act of 2008, was reported out of House Education and Labor Committee on 5/14/08; a closely related bill, H.R. 6358, was introduced on 6/24/08, and passed on the floor of the House on 6/25/08. The legislation sets minimum standards for boot camps and other private residential programs as well as civil penalties for violation of those standards, and provides for federal oversight of such programs, including mandates that complaints of child abuse/neglect in the programs be investigated.

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 2, 2007. 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 on December 12, 2007 as P.L. 110-134. The final 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).

Offender Reentry Legislation

On 11/13/07, the Second Chance Act, H.R. 1593 (a bill to provide comprehensive reentry services for youth and adults returning to their communities after placement in lock-up) 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 was passed by the full Senate on 3/11/08 (by unanimous consent), and it was signed into law on 4/9/2008 as P.L. 110-199.

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, was marked up in the Senate Judiciary Committee on March 6, 2008. The bill has not yet passed the Senate (it was included as part of S. 3297, and brought to the Senate floor in late July, but the Senate was unable to overcome a filibuster on the bill).

Runaway and Homeless Youth Act Reauthorization

A bill to reauthorize and improve the federal Runaway and Homeless Youth Act, H.R. 5524, was passed in the House under "suspension of the rules" on June 9. On May 22, a similar Senate companion bill (S. 2982) was favorably voted out of the Senate Judiciary Committee. This legislation was incorporated as part of S. 3297 (as was the Mentally Ill Offender Legislation), and brought to the Senate floor in late July, but the Senate was unable to overcome a filibuster on the bill.

Juvenile Justice and Delinquency Prevention Act Reauthorization

On 6/18/08, Senators Leahy, Specter and Kohl introduced legislation to reauthorize and improve the federal Juvenile Justice and Delinquency Prevention Act. That legislation (S. 3155) was considered in the Senate Judiciary Committee on 7/31/08, and voted favorably out of Committee at

that time. No Senate floor action or House Committee action is expected this year.

Gangs Legislation

On 6/14/07, 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 Chairman, 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.

Voluntary Home Visiting Legislation

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). On 5/16/07, Rep. Danny Davis and Rep. Todd Platts introduced the House version of the legislation, H.R. 2343. On 6/11/08, the House Education and Labor Committee held a hearing on the bill, and then held a mark-up of H.R. 2343 on June 18. The bill has been favorably voted out of the House Committee, and is awaiting House floor action.

Indian Child Protection and Tribal Foster Care

On 1/25/07, 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.

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 Senate legislation to reauthorize the Higher Education Act (S. 1642) passed the Senate with a vote of 95-0 on 7/24/07. The House/Senate conference report (resolving the differences between the bills) was passed in the House and Senate on 7/31/08, and signed into law as P.L. 110-315 on 8/14/08. 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 full-time in public or private child welfare services. (2) PUBLIC SECTOR EMPLOYEES — An individual who is employed in public safety (including as a first responder, 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 working full-time to provide mental health services to children, or adolescents.

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 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. ■

For further information on any federal legislation (including copies of bills, copies of committee reports, floor votes, etc.), visit *www.Thomas.loc.gov*

Children's Law News

News

NACC Call for Abstracts. The NACC is soliciting abstracts for presentations at its 32nd National Juvenile and Family Law Conference, August 19–22, 2009 in Brooklyn, NY. For more information please visit: *www.naccchildlaw.org*. Submissions must be received by February 15, 2009.

NACC 2009 Outstanding Legal Advocacy Award. Nominations for the 2009 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. The deadline is June 1, 2009.

NACC 2009 Law Student Essay Competition. The NACC is accepting essays for the 2009 Law Student Essay Competition. The winning essay will be published in the 2009 Children's Law Manual, and the winner will be given $1,000, a one-year NACC membership, and a scholarship to the 2009 conference in Brooklyn, NY. 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 *Kellogg.Anne@tchden.org*. The deadline is June 1, 2009.

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

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*.

Conferences & Trainings

The NACC's premier training each year is the National Juvenile and Family Law Conference. The 2008 Juvenile and Family Law Conference was held in Savannah, Georgia, in August. The 2008 Conference was attended by 672 members, a record-breaking number! The 2008 Children's Law Manual, *If It Were Easy, Anybody Could Do It: The Specialized Practice of Juvenile and Family Law* — a compilation of articles authored by presenters and produced in conjunction with the conference — is available for purchase in the publications section. Please mark your calendars now for the 2009 Conference in Brooklyn, NY, August 19–22, 2009!

December 10–12, 2008:

Beyond the Bench XIX, Judicial Council of California, Center for Children, Families, and the Courts, San Francisco, CA. For more information, visit: *www.courtinfo.ca.gov/programs/cfcc/resources/calendar/*.

February 23–25, 2009:

Children Today…America's Future! Child Welfare League of America National Conference. For more information visit: *www.cwla.org*.

May 18-22, 2009:

NACC 14th Annual Rocky Mountain Child Advocacy Training Institute, Louisville, CO. This is a five-day intensive professional trial skills training program for lawyers who represent the interests of children. Participants learn a variety of trial skills through lecture, demonstration, discussion, and participatory workshops. The majority of the training takes place in a simulated courtroom setting, where participants perform as trial lawyers. The training is presented in conjunction with The National Institute for Trial Advocacy and the Rocky Mountain Children's Law Center. Brochures will be mailed to all NACC members in early 2009. For more information, please visit *www.naccchildlaw.org*.

August 19-22, 2009:

NACC 32nd National Juvenile and Family Law Conference, Brooklyn, NY. For more information, visit: *www.NACCchildlaw.org*.

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*.

***If It Were Easy, Anybody Could Do It: The Specialized Practice of Juvenile and Family Law*, the 2008 edition of the NACC Children's Law Manual Series** is now available for purchase. To order, you can call the NACC toll free at 888-828-NACC, use the Publications Order Form in this issue, or order online at *www.naccchildlaw.org*.

NACC Child Welfare Law Office Guidebook: Best Practice Guide-

lines 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 chargeat *www.naccchildlaw.org*.

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, or *www.bradfordpublishing.com*. NACC members receive a 20% discount.

Where Are All the Children? Increasing Youth Participation in Dependency Proceedings, by Erik Pitchal. This article considers the absence of foster children from juvenile court cases that decide their future and present a framework for thinking about how to increase their engagement. This article is available at: *epitchal.googlepages.com/prof.eriks.pitchal*.

A Review of ***Judging Children As Children: A Proposal for a Juvenile Justice System*** authored Hon. Michael Corriero, reviewed by Erik Pitchal, available at: *epitchal.googlepages.com/prof.eriks.pitchal*.

Career Center

NACC members now have access to our online Career Center. Non-members may post openings, but only members may post their resumes and may receive alerts regarding new job postings. Access the Career Center at: *www.naccchildlaw.org/networking/*.

Three positions are currently available at **Legal Advocates for Children and Youth**, San Jose, CA.

Staff Attorney: The attorney will accept court appointments to represent minors subject to petitions alleging abuse and neglect. Frequent court

2009 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 June 1st, 2009.

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

Nominate online at **www.NACCchildlaw.org**

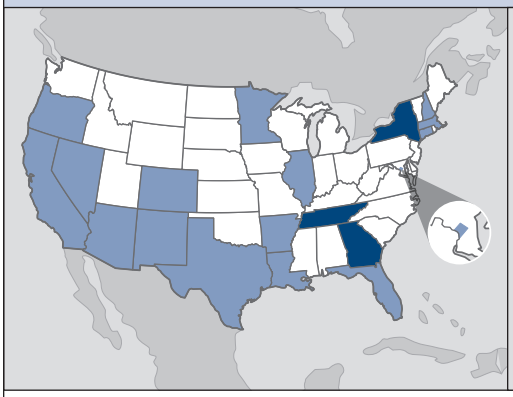
appearances will be required in this position. It is anticipated that the attorney will appear primarily on a law and motion calendar. Complex trial litigation will also be required in this position. The attorney will work in tandem with a LACY social worker to assess the needs of minor clients. The attorney will meet with clients in a variety of environments, including office, school, and home settings. It is expected that the attorney will also provide advocacy for juvenile dependent clients in other legal areas, including education. Attorney may assist in other LACY projects.

Part-Time Attorney: This attorney position will require a commitment of 21 hours per week. The attorney will accept court appointments to represent minors subject to petitions alleging abuse and neglect. Frequent court appearances will be required in this position. It is anticipated that the attorney will appear primarily on a law and motion calendar. Some trial work will also be required. The attorney will work in tandem with a LACY social worker to assess the needs of minor clients. The attorney will meet with clients in a variety of environments, including office, school, and home settings. It is expected that the attorney will also provide advocacy for juvenile dependent clients in other legal areas, including education. Attorney may assists on other LACY projects.

Part-Time Social Worker: This social worker position will require a commitment of 21 hours per week. The social worker will work in tandem with different LACY attorneys to identify and address the needs and interests of the clients. The position will require the social worker to assess the suitability for placement and visitation of parents, relatives, and foster care providers. The social worker will be expected to meet with clients in various settings, including home and school environments. The social worker should coordinate with other service providers working on behalf of the minor, including therapists and educators. In certain cases, the social worker may be asked to provide oral testimony or a written statement in support of LACY position.

To apply, send cover letter, resume, and a list of three references to:
Chantal Kurpiewski
Legal Advocates for Children & Youth
111 West St. John Street, Suite 315
San Jose, CA 95113
chantalk@lawfoundation.org
fax: 408-293-0106 ■

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*



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*.

Georgia (GACC)

Congratulations to the GACC, this year's recipient of the NACC's Affiliate of the Year Award! Jane Okrasinski, Executive Director of GACC, accepted the award in Savannah, GA at the 31st National Juvenile and Family Law Conference in August. GACC worked with the Georgia Office of the Child Advocate to provide scholarships for over 170 of Georgia's child and family law practitioners to attend the Conference.

GACC also boasts the second largest affiliate membership. GACC has developed its own website where affiliate members may find the latest local news and training updates. To join or for more information on GACC and its activities, please visit: *www.GACCchildlaw.org* or call 706-546-8902.

New York

The New York affiliate is now forming! For more information, please contact Tamara Steckler at 212-577-3502 or *tasteckler@legal-aid.org*.

Tennessee

The Tennessee affiliate is now forming! For more information, please contact Jeanne "Rickey" Schuller at 615-741-9183 or *Jeanne.Schuller@state.tn.us*. ■

Thank You

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

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I wish to become a member.

INDIVIDUAL MEMBERSHIPS:

- ☐ Student $45
- ☐ Regular $90
- ☐ Supporting $125*
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- ☐ 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

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

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