

THE GUARDIAN

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Keystone Mountain Resort ■ Keystone, Colorado ■ August 15-18, 2007

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Mission

THE MISSION OF THE NACC IS TO:

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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



Year-End President's Message

NACC LAUNCHES ENDOWMENT CAMPAIGN

Marvin Ventrell, NACC President / CEO

2006 has been a rewarding year for the NACC. After so many years of envisioning the day when *Child Welfare Law* would be a formal legal specialty and our lawyers could be certified as specialists, that vision became a reality. We completed our Attorney Specialty Certification Pilot Program and certified the nation's first class of Child Welfare Law Specialists. Now we are moving forward to open certification to attorneys in all the states, and the country is embracing the program as part of the commitment to Court Improvement.

As an organization, the NACC also grew to a record 2,400 members this year. It seems we are well positioned at the end of our 29th year as an organization to serve our members and make a difference in the lives of the court-involved children and families in this country. The challenge, of course, is to keep this momentum and ensure that the NACC continues its effectiveness in the years to come.

Toward that goal, I am pleased to announce the creation of the NACC Lea Endowment Campaign. Due to the generosity of the Lea for Justice Fund, the NACC and its membership have a rare opportunity to ensure our long-term service to America's children by creating a \$1.5 million endowment. The NACC began an endowment fund several years ago with a gift from the Steven Cahn Family. Additional donations, including gifts from the Lea for Justice Fund, have allowed the endowment to grow to \$200,000. Now, the Lea for Justice Fund has pledged an additional \$650,000 on the condi-

tion that the NACC match the pledge, dollar for dollar, within the next three years. The result will be the \$1.5 million NACC Lea Endowment, which may also bear the names of additional large-scale donors.

The Lea Endowment Fund will be restricted such that its principal will remain intact and the interest generated will be used to support NACC programs including such things as the NACC National Child Advocacy Resource Center, the *Amicus Curiae* Program, Policy Advocacy, Certification, and Children's Law Office development. Additional fund use may include the creation of donor-named positions or chairs at the NACC.

Over the next few months, the NACC Lea Endowment Campaign Committee will be developing our investment use and asset management policy, selecting our fund manager, identifying donor prospects, and finalizing campaign strategy. Then the fundraising begins, and we are confident in our ability to reach our goal. Ultimately, we will reach out to your communities across the country, and we hope we can count on NACC members to link the NACC to important donor opportunities.

The NACC Board and Staff are grateful to all of you, our members, for your continued support of the organization and the valuable work you do. We look forward to next year together. ■

Happy Holidays!



NACC Board of Directors Election

The NACC is governed by a 23-member Board of Directors, each member serving a six-year term. NACC Directors are elected by the NACC membership following approval of a slate of candidates by the existing Board. A slate of candidates is first recommended to the Board of Directors by the Development / Nominations Committee, which has the duty to select the best available candidates using criteria including expertise in children's law and advocacy, commitment to the NACC, association development skill (membership, visibility, fundraising), and diversity (racial, gender, disciplinary, and geographic).

The following individuals have been approved by the Board of Directors to serve as NACC Directors. **All NACC members are asked to indicate their votes by checking the "for" or "against" box next to each candidate's name and returning the ballot to the NACC by fax or mail by close of business January 12, 2007.**

Candidates for NACC Board of Directors Term 2007-2012

Robert Fellmeth, JD

Mr. Fellmeth is the Executive Director of Children's Advocacy Institute in California, an academic center and statewide law firm which advocates for children in the courts, legislature and agencies. Professor Fellmeth holds the Price Chair in Public Interest Law at the University of San Diego School of Law, teaches Child Rights and Remedies, directs a dependency court clinic representing abused children, and writes the annual California Children's Budget. His organization also publishes a Children's Regulatory Law Reporter (monitoring agencies), a legislative report card, and impact litigation projects. An original "Nader Raider," Professor Fellmeth has served as a state and federal prosecutor and has devoted his career to public interest and child advocacy. He has written 14 books and treatises and numerous academic articles and opinion pieces in the major press. He serves on the Board of several organizations including the Public Citizen Foundation in Washington D.C., and is counsel to the Board of the National Association of Child Advocates. He is currently an NACC Board Officer serving as Secretary and is running for reelection to the Board.

Norton Roitman, MD

Dr. Roitman is certified in adult and child psychiatric specialties and has a depth of experience in administrative and forensic psychiatry. He has been in practice for over 27 years. His initial training integrated the biological and classical psychological mechanisms of human behavior and emotions. After receiving his BS from University of Wisconsin, and his medical education at University of Illinois, he received basic adult psychiatric training and internship at University of California, San Diego. His research Fellowship there was followed by specialty training in Child Psychiatry at a private freestanding Child Study Center (Reiss-Davis) in Los Angeles. He then worked

with the most severely mentally ill at Napa State hospital, and in 1985, achieved a faculty position at the University of Nevada School of Medicine. In that capacity he ran the State facility for the severely mentally ill. In 1988, he relocated to Southern Nevada and has taught as a clinical faculty member in the pediatric, family practice, and psychiatric departments. Dr. Roitman founded a managed care company, Harmony and Healthcare, and the Las Vegas Center for Children. Since 1995 he has divested all administrative responsibilities and now has an exclusive clinical private practice as well as contracts for evaluation and consultation services for children and teens at Girls and Boys Town, Clark County School District, Clark County Department of Family Services through Juvenile Detention, and the Department of Probation and Parole. Dr. Norton has served as faculty at three NACC national conferences.

Leslie Starr Heimov, JD / CWLS

Ms. Heimov has been with Children's Law Center of Los Angeles (CLC) since 1992. She served first as a staff attorney and later moved to a supervising attorney position, providing oversight and training to 30-plus case-carrying attorneys while continuing to handle complex and high profile cases. Immediately prior to assuming her present duties, Ms. Heimov, as Special Projects Director, was responsible for handling CLC's legislative and policy agenda, including drafting legislation and working closely with elected officials, their staff, and other advocates to support important legislative reforms. In addition to serving as CLC Policy Director, she currently serves as Project Director of the Home At Last Initiative funded by the Pew Charitable Trusts. Ms. Heimov chairs a countywide Task Force on Pregnant and Parenting Teens and is a founding member of the Task Force to End Homophobia in Foster Care. She serves on the National Advisory Board of the NACC's Children's Law Office Project. Ms. Heimov is a trial skills instructor for the National Institute of Trial Advocacy and regularly presents to the bench, attorneys, social workers, caregivers and law students on a multitude

of topics related to the representation of abused and neglected children. She is running for election to the NACC Board after filling a vacant seat on the Board by appointment. Leslie is a Certified Child Welfare Law Specialist.

Theresa Spahn, JD

Ms. Spahn has been the Executive Director of the Colorado Office of the Child’s Representative since its creation in 2001. She has long been a devoted and successful advocate of children’s issues through her work as a Deputy District Attorney, District Court Magistrate and particularly in her current position. She was awarded the NACC 2003 Outstanding Legal Advocacy Award and serves on numerous committees and boards, including the Colorado Women’s Bar Association Board, Co-Chair of the CWBA Public Policy Committee, the Colorado Supreme Court Family Issues Committee, the Colorado Bar Association Domestic Violence and Children Committee, and the Colorado Alliance for Drug Endangered Children. She is running for election to the NACC Board after filling a vacant seat on the Board by appointment.

Tamara Steckler, JD

Ms. Steckler has been Attorney-in-Charge of The Legal Aid Society, Juvenile Rights Division in New York, NY since July of 2005. She is responsible for the day-to-day administration of a children’s law office consisting of 275 paid staff, including 150 attorneys and 40 management staff, in five trial offices and one administrative office located throughout New York City. She is also responsible for the hiring of all personnel, including overseeing all employment law issues. She is charged with the configuration and implementation of a yearly budget of over \$27 million and for coordination of all fundraising efforts. Previously, Ms. Steckler was Assistant Executive Director and Director of Development at New York Legal Assistance Group, Inc. Prior to that, she was a trial attorney with The Legal Aid Society, Juvenile Rights Division in Brooklyn, NY. From 1990 to 1992, she was Legal Director at Talbot Perkins Children’s Services in New York. She received her undergraduate degree from Syracuse University in 1982 and her law degree from Hofstra University in 1986.

John Stuemky, MD

Dr. Stuemky, Associate Professor of Pediatrics, University of Oklahoma, College of Medicine, and Chief of the Section of General Pediatrics and Pediatric Emergency Medicine at Children’s Hospital at OU Medical Center, has been involved in the diagnosis and care of abused and neglected children since 1975. He was one of the founders of the Child Protection Team at Children’s Hospital which evaluates approximately 1,000 children a year for abuse and neglect. He has testified in many cases of abuse and neglect, in both federal and state courts and has served on the Oklahoma Child Death Review Board since its inception in 1992. He is active and has served on many regional and statewide task forces and committees relating to child abuse and neglect. He has been one of the two co-directors of the statewide Child Abuse Medical Examiner Program that started in 1990. As Medical Director of the Emergency Department at Children’s Hospital and principal investigator of the Emergency Medical Services for Children (EMS-C) Program for the State of Oklahoma, he has been instrumental

in developing death scene investigation for child deaths, incorporated into the State EMT Training Program. Dr. Stuemky has been a board member of the National Association of Counsel for Children (NACC) since 1996 and has been a member of the NACC since 1979. He is an NACC Officer serving as Vice Chair and is running for reelection to the Board.

Shannan Wilber, JD

Ms. Wilber has been the Executive Director at Legal Services for Children (LSC) since April 2001. LSC is a non-profit organization providing legal and social services to children and youth in the San Francisco Bay Area. Prior to her current position, Shannan served as a Staff Attorney at the Youth Law Center, where she specialized in the legal rights of children in out-of-home care. She was the first Directing Attorney at Legal Advocates for Children and Youth (LACY) in San Jose. Shannan has been instrumental in developing and implementing professional standards for the care of lesbian, gay, bisexual and transgender youth in out-of-home care. She is running for election to the NACC Board after filling a vacant seat on the Board by appointment.

Additionally, the NACC is pleased to announce that the following individuals have been appointed by the NACC Board of Directors to fill the remainder of vacant Board seats:

Honorable Douglas Johnson, Judge of the Douglas County Juvenile Court, Omaha, Nebraska. Term expires 2010.

Anita Lacy, Founder - Michigan Foster Education Resource Network, current law student, Kalamazoo, Michigan. Ms. Lacy will fill one of two NACC Youth Board Member seats. Term expires 2012.

Jane Okrasinski, JD, Executive Director, Georgia Association of Counsel for Children, Athens, Georgia. Term expires 2008. ■

BALLOT
 Please copy or cut out, complete and return via fax (303-864-5351) or mail to NACC Elections, 1825 Marion Street, Suite 242, Denver, CO 80218.
 Ballot must be received by 5:00 p.m. MST, January 12, 2007.

Candidates for NACC Board of Directors	FOR	AGAINST
Term 2007–2012		
Robert Fellmeth, JD -----	<input type="checkbox"/>	<input type="checkbox"/>
Norton Roitman, MD -----	<input type="checkbox"/>	<input type="checkbox"/>
Leslie Starr Heimov, JD / CWLS --	<input type="checkbox"/>	<input type="checkbox"/>
Theresa Spahn, JD -----	<input type="checkbox"/>	<input type="checkbox"/>
Tamara Steckler, JD -----	<input type="checkbox"/>	<input type="checkbox"/>
John Stuemky, MD -----	<input type="checkbox"/>	<input type="checkbox"/>
Shannan Wilber, JD -----	<input type="checkbox"/>	<input type="checkbox"/>



Cases

Dependency / Agency Liability

Idaho Supreme Court Holds That The Idaho Child Protection Act (ICPA) Imposes An Affirmative Duty Of Care In the Department To Competently Investigate Reports Of Child Abuse. Rees v. State Department of Health and Welfare, 137 P.3d 397 (Idaho 2006).

The Supreme Court of Idaho determined whether the Idaho Department of Health and Welfare and its employees can be found liable for negligently investigating a reported case of child abuse.

Rees reported suspected child abuse after he saw bruises on his two-year-old son, Tegan, who lived with his mother and her boyfriend. After conducting an investigation into the child abuse allegations, the licensed social worker, Ott, returned Tegan to the mother's custody. Less than two months later, Tegan was beaten to death by the mother's boyfriend. Rees then brought a wrongful death action against the Department and Ott. The district court granted summary judgment for the Department and Ott. Rees appealed.

The first issue the Court considered was whether Idaho law recognizes a special duty of care in this circumstance. Rees argued the Idaho Child Protection Act (ICPA) creates an affirmative duty of care in the Department to competently investigate reports of child abuse. This was a matter of first impression in Idaho, thus the Court looked to other jurisdictions for guidance. The Court applied the test found in *Radke v. County of Freeborn*, 694 N.W. 2d 788 (Minn. 1987). In *Radke*, the Court applied a fact-intensive four-part test to address an identical factual situation. The *Radke* Court considered: (1) whether the government had actual knowledge of the dangerous condition; (2) whether there was reasonable reli-

ance by persons on the government's representations and conduct; (3) whether a statute set forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole; (4) whether the government used due care to avoid increasing the risk of harm.

Analyzing the first factor, the Court noted that Rees reported the suspected child abuse, thus alerting the Department about the danger to Tegan in his mother's home. Therefore, the Court found that the Department had actual knowledge of the dangerous condition. As to the second factor, the Court held that Rees reasonably relied on the Department's statements and conduct in investigating the abuse. The Court next reviewed ICPA, and determined that the relationship created by ICPA between the Department and abused children goes far beyond the relationship of police or other investigatory agencies and crime victims. Thus, ICPA creates a special relationship between abused children and the Department, satisfying the third factor. Finally, the fourth factor required the Court to consider whether the Department used due care to avoid future harm to Tegan. The Court determined that there was a genuine issue of material fact as to whether Ott and the Department exercised due care in their investigation.

The next issue before the Court was whether there is an exception to liability under the Idaho Tort Claims Act (ITCA). The purpose of ITCA is to provide relief to those suffering injury from the negligence of government employees. The ITCA is to be construed liberally, consistent with its purpose. Essentially, under the ITCA, liability is the rule and immunity is the exception. The Court determined that Rees introduced sufficient evidence to create a genuine issue of material fact as to the Department and Ott's negligence.

Therefore, the Court held that it could not conclude as a matter of law that Ott and the Department were immune from liability under the ITCA.

The Court concluded that in this case the Department and Ott had a duty to competently investigate the reported child abuse because of the special relationship created once the report of suspected abuse was received. Additionally, the ITCA does not provide either the Department or Ott with immunity from suit because genuine issues of material fact exist as to whether Ott competently performed her investigation into Tegan's injuries. The order granting summary judgment was reversed.

Custody / Grandparent Visitation

Pennsylvania Supreme Court Holds That Application Of The State's Statute Governing A Grant Of Partial Custody Or Visitation To Grandparents Was Constitutional And Did Not Infringe Upon The Father's Due Process Rights. Hiller v. Fausey, 904 A.2d 875 (Pa. 2006).

The issue before the Pennsylvania Supreme Court was whether the application of the state's statute governing a grant of partial custody or visitation to grandparents upon the death of their child (the grandchild's parent) infringed upon the surviving parent's due process rights to direct the care, custody, and control of his child, and should therefore be declared unconstitutional.

The child, Kaelen Fausey, lived with his mother and father from his birth in 1994 until 2002, when his mother died after suffering from cancer. Prior to his mother's death, Kaelen had frequent visits with his maternal grandmother, Cheryl Hiller. During the last two years of his mother's life, Kaelen visited

his grandmother almost daily, as his grandmother often took Kaelen to and from school and cared for him when his mother was unable to do so. Grandmother also assumed the difficult task of preparing Kaelen for his mother's impending death. The trial court found credible testimony that Kaelen enjoyed spending time with his grandmother, and that the two shared a very close and affectionate relationship. After his mother's death, Kaelen's father began to deny Grandmother any contact with her grandson. Between his mother's death in May, 2002 and April, 2003, Kaelen saw his grandmother on only three occasions, when he was visiting other maternal family members.

Consequently, Grandmother filed for partial custody of Kaelen under

Pennsylvania statute *23 Pa.C.S. §5311*. Section 5311 allows a court to grant the parents or grandparents of a deceased parent partial custody or visitation with their grandchild upon a finding that partial custody or visitation would be in the best interest of the child and would not interfere with the parent-child relationship. After a two-day hearing, the trial court granted Grandmother partial custody of Kaelen consisting of one weekend per month and one week each summer. Kaelen's Father appealed.

The precise scope of the parental due process right in the visitation context was left open by the U.S. Supreme Court in *Troxel v. Granville*, 530 U.S. 57 (2000). As a result, the Pennsylvania Supreme Court granted review

to determine whether the application of §5311 in this case infringed on the Father's fundamental rights in violation of the Fourteenth Amendment Due Process clause. Using a strict scrutiny analysis the Court discussed first, whether the infringement was supported by a compelling state interest, and second, whether the statute was narrowly tailored to serve that interest. As to the first factor, the Court found that Pennsylvania had a compelling state interest in protecting the physical and emotional health of children. In analyzing the second factor, the Court noted that unlike the overly broad statute in *Troxel*, the Pennsylvania statute limits visitation to grandparents, and more specifically, grandparents whose child has died. In addition, §5311 requires courts to

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- *All Advocates for Abused and Neglected Children*

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



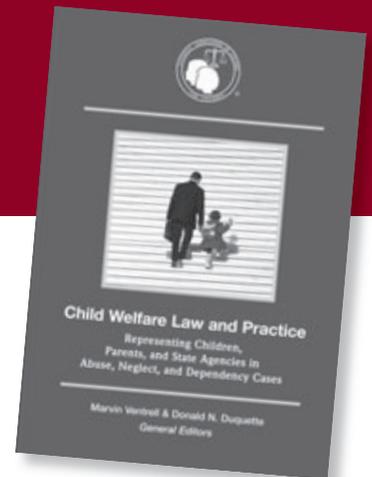
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ensure that grandparent visitation will not impede the parent-child relationship and to find that such visitation is in the child's best interest. Pennsylvania courts are also required to consider the amount of prior contact between the child and the grandparent and the likelihood that the child's parent would provide for visitation without a court order. Based on these requirements, the Court found that the statute was narrowly tailored to protect a parent's fundamental rights while also allowing the state to intervene to protect the welfare of children.

Lastly, the Court reaffirmed that in addition to the statute's requirements, courts must also apply a presumption in favor of a fit parent's decisions. However, in contrast to other jurisdictions, the Pennsylvania Supreme Court held that while a fit parent's decisions must be given "special weight," in accordance with *Troxel*, grandparents are not required to show harm or parental unfitness in order to rebut the presumption. The Court held that the statute's protections, combined with the fit-parent presumption, work to adequately protect a parent's fundamental rights.

The Court concluded that in granting Grandmother partial custody, the trial court had properly applied the presumption and met the requirements of §5311. The statute's application survived strict scrutiny and the trial court decision was upheld.

Juvenile Justice / Sex Offender Registration

Indiana Court Of Appeals Holds Juvenile Cannot Be Forced To Register As A Sex Offender Where State Failed To Prove That Juvenile Was Likely To Repeat An Act That Would Constitute A Sex Offense If Committed By An Adult. In the Matter of Z.H., 850 N.E.2d 933 (Ind. Ct. App. 2006).

The appellant, Z.H., appealed the juvenile court order requiring him to register as a sex offender. Z.H. asserted that the State did not establish by clear and convincing evidence that he was likely to repeat an act that would constitute a sex offense if committed by an adult. The Indiana Court of Appeals found that the State did not

meet its burden and reversed the juvenile court order.

In 2003, at the age of seventeen, Z.H. was found to have committed child molestation. The juvenile court placed Z.H. on probation for two years under the special condition that he undergo treatment at an inpatient facility that provides treatment for adolescent, male sex offenders.

In 2004, Z.H. was transferred to a group home. In 2005, upon discharge from the group home, the State filed a petition to require Z.H. to register as a sex offender, and the juvenile court issued an order requiring Z.H. to be placed on the sex offender registry. The juvenile court found that there was clear and convincing evidence that Z.H. was likely to repeat an act that would be a sex offense if committed by an adult. Z.H. appealed.

In determining whether the State met its burden of proving by clear and convincing evidence that Z.H. was likely to repeat an act that would be a sex offense if committed by an adult, the Court considered whether Z.H. had been rehabilitated as the result of the treatment he received in the treatment facility and the group home. The Court held that if Z.H. was rehabilitated, there could not be clear and convincing evidence that he was likely to re-offend, and he could not be placed on the sex offender registry.

The juvenile court had found clear and convincing evidence primarily based on Z.H.'s probation officer's testimony. The probation officer testified as to Z.H.'s doctor's progress reports and stated: "Dr. Ofstein strongly believed that the juvenile should be placed on the sexual offender registry." However, the Appeals Court determined that nothing in Dr. Ofstein's remarks indicated such a strong belief. Rather, the doctor's reports suggested only that the juvenile court should review the legal criteria for placing a juvenile on the sex offender registry to determine whether or not Z.H. should be added.

The Court noted that in reaching its decision, it was to look solely at Z.H.'s condition at the time of his discharge from the group home. The State presented progress reports from the treatment facility and group home, which indicated Z.H.'s difficulties

complying with the rules, internalizing his therapy and high risk of recidivism. However, the Court noted that there were no progress reports in evidence from February and May, 2005, when Z.H. was released. At the time of discharge, the only evidence in the record indicated that Z.H. had completed the treatment goals and exhibited no further acting-out behavior since the last review. In addition, the group home and Z.H.'s probation officer both recommended discharge.

Given the lapse in time in the progress reports, the juvenile court's conclusion that Z.H. had met his treatment goals, and the lack of testimonial evidence supporting the State's position, the Indiana Court of Appeals concluded that the State had not met its burden of proving by clear and convincing evidence that Z.H. was likely to repeat an act that would be a sex offense if committed by an adult. The juvenile court order was reversed.

Dependency / Mental Health Services

U.S. District Court Issues An Injunction Ordering The State of California To Provide Necessary Mental Health Services To Children Who Are Currently In Foster Placement Or At Risk Of Being Placed In Foster Care. Katie A. v. Bonta et al., 433 F.Supp.2d 1065 (C.D. Cal. 2006).

In 2002, Plaintiffs, five children with unmet mental health needs, filed a class action lawsuit in California on behalf of similarly situated children currently in foster care or at risk of being placed in care. The Defendants in the case are the California Department of Health Services (DHS) and the California Department of Social Services (DSS) ("State Defendants"), and Los Angeles County DCFS ("County Defendants"). The Plaintiffs and the County Defendants reached a settlement in 2003. Thus, the current litigation involved only the State Defendants.

On September 9, 2005, Plaintiffs filed a motion asking for a preliminary injunction requiring the State to provide wraparound services and therapeutic foster care to all members of the class.

Foster children in California obtain, or are entitled to obtain, health care services through Medi-Cal, California's Medicaid program. Plaintiffs claimed that as a result, all foster care children who have "behavioral, emotional, or psychiatric impairments" have a right to wraparound services and / or therapeutic foster care when medically necessary. Wraparound services are individualized, community-based, collaborative programs designed to help children with mental health issues who are in danger of being placed in foster care. Therapeutic foster care is a separate program for youth with severe mental health problems who cannot remain in their homes but would benefit from a home-like environment. The Plaintiffs argued that without these services, foster children with mental health problems are often shuttled from one placement to another, while their mental illnesses remain untreated.

Defendants conceded that under the Medicaid Act, California foster children's health care expenses must be covered by Medi-Cal; however, they disputed that wraparound services or therapeutic foster care are covered under the Act. In support of their position, the Defendants first argued that the Medicaid Act applies only to "services," and that wraparound and therapeutic foster care are not services, but instead are "approaches, processes or philosophies" concerning the delivery of medical care. The Defendants further argued that even if wraparound or therapeutic foster care are considered services, coverage for these services is not mandated, as they are not expressly listed in the Act.

The Court disagreed with both of Defendant's positions, holding first, that wraparound and therapeutic foster care should be considered "services," and second, that although not explicitly listed in the statute, wraparound services and therapeutic foster care may be included in one of the twenty-eight enumerated categories. Plaintiffs provided the Court with a chart demonstrating how each component of wraparound and therapeutic foster care corresponded to a category of mandated services specifically listed in the statute.

The Court further went on to assert that individual states do not have the authority to determine what types of health care services are provided to children; the only requirement is that the service be "medically necessary." The Medicaid Act does not include a definition of "medically necessary." Instead the decision is left with "the individual recipient's physician, and not with clerical personnel or government officials." Plaintiffs presented testimony from many experts asserting that these services are necessary for foster children with mental health needs. Defendants offered no expert testimony to refute this evidence.

In granting the injunction, the Court stated, "At stake in this lawsuit is the health of thousands of children who are already in, or are likely soon to wind up in, foster care. Children with serious emotional disabilities are among the most fragile members of our society; their medical needs frequently extend across a spectrum of services providers and state agencies." The Court therefore ordered California to assess the class and provide wraparound services and therapeutic foster care when medically necessary. Such services must be provided on a "consistent, statewide basis, through the Medi-Cal program, or other means, beginning not later than 120 days from entry of this order."

Following this decision, the State of California requested an emergency stay of the order pending its appeal. On July 26, 2006, a federal appeals court denied the request for a stay and ordered the state to comply with all requirements of the district court order.

Custody / Parents' 1st Amendment Right

Pennsylvania Supreme Court Holds That Parents May Be Prohibited From Advocating A Religious Belief That Would Constitute A Crime If Acted Upon Only If Such Speech Would Endanger The Physical Or Mental Health Of The Child. Shepp v. Shepp, 906 A.2d 1165 (Pa. 2006).

Stanley Shepp (Father) and Tracey Shepp (Mother) married in 1992, and their child, Kaylyne Shepp, was born a year later. The parties converted to the Mormon faith prior to marriage.

The parties separated in 2000 and divorced in 2001. A short time later the Mormon Church excommunicated Father because he is a Mormon Fundamentalist who believes in polygamy. After the parties' separation, Kaylyne lived with her mother. However, in 2002, Father filed a Petition seeking shared legal and physical custody of Kaylyne.

At a hearing in May, 2002, Mother voiced fears that Father would pressure Kaylyne to engage in polygamy. In addition, Father's stepdaughter testified that Father had told her that "if you didn't practice polygamy . . . you were going to hell." Father testified that while he would make his beliefs known to Kaylyne, he would not attempt to force her into a polygamous relationship. The trial court determined that contact between parent and child can be restricted only where the parent suffers from "severe mental or moral deficiencies that constitute a grave threat to the child," and concluded that while there may be evidence of a "moral deficiency," there was no evidence that Father's belief constituted a grave threat to Kaylyne. However, the trial court specifically prohibited Father from teaching Kaylyne about polygamy until age 18. Father appealed this decision to the Superior Court, which affirmed. The Pennsylvania Supreme Court granted review.

The Supreme Court of Pennsylvania first discussed *Wisconsin v. Yoder* (406 U.S. 205 (1972)). In *Yoder*, the U.S. Supreme Court held that the criminal convictions of Amish parents for violating Wisconsin's compulsory school attendance law were invalid based on the First Amendment. The *Yoder* Court cited another Supreme Court decision, *Pierce v. Society of Sisters*, (268 U.S. 510 (1925)), and stated that "The Court's holding [in *Pierce*] stands as a charter of the rights of parents to direct the religious upbringing of their children." Based on *Yoder*, Father argued that state action interfering with religious speech between parent and child should be subjected to strict scrutiny.

In response, Mother claimed polygamy was not a constitutionally protected practice within a religious context, due to the fact that plural marriage is illegal in Pennsylvania. Mother argued

that because the statute prohibiting polygamy was “a valid and otherwise neutral law, it follows that the Commonwealth of Pennsylvania has the right to enforce, regulate, and prohibit such speech that may be incidental to such conduct.” In support of her argument, Mother relied upon a U.S. Supreme Court decision, *Employment Division, Department of Human Resources of Oregon v. Smith* (494 U.S. 872 (1990)) (*Smith II*). *Smith II* involved an Oregon law prohibiting the possession of peyote. Smith and Black were fired after using peyote during a religious ceremony. When the State of Oregon denied unemployment compensation, Smith and Black filed suit. The Oregon Supreme Court eventually held that the prohibition on peyote was invalid pursuant to the Free Exercise Clause. The U.S. Supreme Court reversed, holding that a compelling government interest is not required “where the challenged State action that is claimed to inhibit the free exercise of religion is a generally applicable criminal law.” Mother argued the Pennsylvania statute prohibiting polygamy was akin to the Oregon statute barring possession of peyote.

The Pennsylvania Supreme Court disagreed. They noted that *Smith II* also discussed “hybrid situations,” involving both the Free Exercise Clause and other constitutional protections, such as freedom of speech or the rights of parents. The U.S. Supreme Court held that such claims should be subjected to a higher level of scrutiny. The Pennsylvania Supreme Court found that the present case was a “hybrid situation” involving the Free Exercise Clause and the fundamental rights of parents; therefore, *Smith II* was not controlling, as it involved only a Free Exercise claim. Instead, the Court referred back to *Yoder* which held that “only those interests of the highest order and those not otherwise served can over-balance legitimate claims to the free exercise of religion.” However, the *Yoder* court also held parental decision-making, even when involving a free exercise claim, can be regulated if it appears that the parents’ decisions will endanger the child’s health or safety.

Applying these standards the Court found that the state’s interest in ensuring conformity with the statute

prohibiting polygamy was not an interest of the “highest order,” which surpassed the interest of a parent in raising his child. The Court further noted that because the trial court determined there was no grave threat of harm to the child, it erred in prohibiting Father from teaching Kaylynne about polygamy. The Court concluded that parents may be barred from advocating religious beliefs, which would be a crime if acted upon, only when it is shown that advocating the restricted behavior would endanger the health or safety of the child.

Dependency / Medical Decisionmaking

The Maine Supreme Court Holds That Issuing A “Do Not Resuscitate” Order Has The Effect Of Terminating Parental Rights. Therefore, The Department May Not Approve Such An Order Without Affording The Parents Notice And An Opportunity For Hearing. In re Matthew W., 903 A.2d 333 (Maine 2006).

The Maine Supreme Court considered whether the Department of Health and Human Services (Department) has the statutory authority to unilaterally approve a “Do Not Resuscitate” (DNR) order without notice to the parents and an opportunity for the parents to be heard.

Matthew was born on August 18, 2005. On September 30, 2005, Matthew was taken to the hospital. After examination, the doctors determined that Matthew was suffering from “shaken impact” injuries. The Department petitioned for a child protection order, and on October 12, the court granted the Department custody of Matthew. On October 20, Matthew’s parents, the Department, and the GAL met with the doctors who were treating Matthew. The doctors reported damage to Matthew’s brain, and concluded that he would never advance beyond a state of total dependence. The doctors then requested a DNR order. The parents initially consented, then revoked their consent the next day, and the DNR was withdrawn.

Based on the information and recommendations from the doctors, the Department unilaterally approved the reinstatement of the DNR. The Depart-

ment requested emergency judicial review and the lower court entered a finding that authorized the Department to approve the DNR, pursuant to the Maine statute. The applicable statute states: “When custody of the child is ordered to the department or other custodian under a preliminary or final protection order, the custodian has full custody of the child subject to the terms of the order and other applicable law...” The lower court interpreted “full custody” to include the authority to make all medical decisions, including approval of a DNR. Matthew’s parents appealed.

Matthew’s parents argued that approval of the DNR constitutes a termination of parental rights. Thus, the approval of the DNR violated their right to due process as they were not afforded sufficient notice or an opportunity for hearing.

The Court held that parents have a fundamental right to raise their children. Before the State can terminate parental rights, due process requires the findings be made by clear and convincing evidence, after notice and a hearing. The Maine Supreme Court agreed with the lower court that the Department has the statutory authority to make medical decisions on behalf of a child who is in its custody. However, the Court held that the approval of the DNR without the parents’ consent would have the effect of terminating their parental rights. Thus, exercise of a DNR over the parents’ objections infringes upon parents’ fundamental rights.

Due process requires that parents be afforded the same procedural protections before approval of a DNR for their child as they are afforded prior to the termination of parental rights. Therefore, the court must provide reasonable notice for a hearing and determine by clear and convincing evidence whether it is in the best interest of the child to give the Department the authority to issue a DNR. At minimum, the court should consider: (1) the child’s quality of life, including whether the child is in a persistent vegetative state; (2) what life-sustaining treatment would be necessary; (3) the degree of pain the life-sustaining treatment or the withholding of life-sustaining treatment would cause the child; (4) the long-term

prognosis for the child; (5) the opinion of medical experts in regard to the foregoing considerations; and (6) the benefit or detriment to the child if the parents participate in the decision making. In this case, the Court determined the requirements of due process were not satisfied.

Thus, the court concluded that the applicable Maine statute does not authorize the Department to unilaterally approve a DNR, except after notice to the parents and the right for them to be heard.

Dependency / ICWA

Minnesota Supreme Court Holds Good Cause Exists To Deny Request By Tribe To Transfer Jurisdiction Where Request Is Received Nearly Nine Months After Tribe Received Notice of Proceedings. In re Welfare of Child of T.T.B., 2006 Minn. Lexis 713.

This case came before the Minnesota Supreme Court on appeal from the Minnesota Court of Appeals. The Court granted review to consider whether good cause existed under the Indian Child Welfare Act (ICWA) and the state Indian Family Preservation Act to deny a Tribe's request for transfer of jurisdiction of a juvenile matter.

This case involved X.T.B., a child eligible for membership in the Oglala Sioux Tribe and the Yankton Sioux Tribe. X.T.B. was born in November, 2003 and was immediately taken into protective custody. On December 31st, the county filed a petition seeking to terminate parental rights or transfer permanent legal custody of X.T.B. In January, 2004, both Tribes were notified of the proceedings, and the county consulted with the Tribes about X.T.B.'s placement. An admit/deny hearing was held on April 20, 2004, and the court set a permanency trial for July 22, 2004. The Yankton Sioux Tribe moved to intervene on April 30, 2004 and filed an affidavit on May 26, 2004 indicating that it was in the best interest of X.T.B. to be placed in a home approved by the Tribe.

The permanency trial was eventually delayed, and on July 21, 2004, the Father, G.W., moved for dismissal. The following day the mother and father moved to transfer jurisdiction of the proceedings to the Yankton

Sioux Tribal Court. The court denied G.W.'s motion to dismiss and deferred its ruling on the motions to transfer jurisdiction to allow the Tribe to file a written acceptance of jurisdiction.

The Yankton Sioux Tribe moved to transfer jurisdiction to its tribal court on September 24, 2004. The district court rejected the motion on the basis that the request came at an advanced stage of the proceeding. G.W. and the Tribe appealed the decision, and the court of appeals reversed, concluding that good cause did not exist to deny transfer of jurisdiction to the tribal court. The Minnesota Supreme Court granted expedited review.

The Minnesota Supreme Court first considered the relevant federal and state law. Pursuant to both ICWA and Minnesota law, "the state court will retain jurisdiction over foster care placement of an Indian child who neither resides or is domiciled on the reservation if: (1) transfer of jurisdiction to the tribe is not requested; (2) either parent objects to transfer; (3) the child's tribal court declines jurisdiction; or (4) the state court finds 'good cause' to deny transfer." While neither ICWA nor state law defines "good cause", the Bureau of Indian Affairs Guidelines (BIA Guidelines) offer some guidance. The BIA Guidelines provide, in part, that good cause to deny transfer may exist when the request is received at an advanced stage in the proceedings and the petitioner did not file the request promptly after receiving notice of the hearing. (BIA Guidelines, 44 Fed. Reg. at 67, 591).

The Court next determined whether this case was at an advanced stage of the proceedings when the transfer motions were received. In its analysis, the Court looked to the Adoption and Safe Families Act (ASFA) timelines. Minnesota statutory law and the ASFA timelines require a permanency hearing within 12 months of the child entering foster care. Additionally, Minnesota state law requires that a permanency hearing must be held within 6 months of out-of-home care for children under age 8. Applying these timelines to this case, the Court noted that the 6-month permanency hearing should have already taken place at the time the transfer motions were

filed. In addition, the transfer motion was not filed until the day on which the permanency hearing was initially scheduled. Based on these facts, the Court found that the proceedings were at an advanced stage when the motions to transfer were filed. The Court also held that despite receiving timely notice of the proceedings, the Tribe did not act promptly, instead waiting until September, 2004 to request that jurisdiction be transferred.

The Court noted that tribal courts are the appropriate forum for custody proceedings involving Indian children. However, the Court concluded that based on the record in this case and the application of ICWA, the BIA Guidelines, and the ASFA timelines, the district court properly found that the request was received at an advanced stage of the proceedings and good cause existed to deny transfer of the proceedings.

The NACC filed an amicus curiae brief in this case, suggesting that the Court should interpret the permanency timelines of ASFA coextensively with the "good cause" transfer provision in ICWA.

Amicus Curiae briefs filed by the NACC are available on the NACC website at: www.NACCchildlaw.org.

Dependency / Right To Counsel

The Connecticut Supreme Court Holds That Parents Have Standing To Assert A Claim That Their Children's Right To Conflict Free Counsel Was Violated. In Re Christina M., 2006 WL 3069305 (Conn.).

This case came before the Connecticut Supreme Court on appeal from the respondent parents who challenged the lower court's decision terminating their parental rights. The Connecticut Supreme Court granted review.

The appellate court upheld the trial court's decision to terminate the parents' rights to their three children on the basis that the children were neglected. At issue in this appeal was whether the child, Christina, received ineffective assistance of counsel, and if so, whether the trial court had an independent duty to appoint a separate guardian *ad litem* for the child.

The Court first considered whether parents have legal standing to challenge the adequacy of their child's legal representation. The Court relied on the appellate court's analysis of the competing interests at stake: the fundamental liberty interest in family integrity and the state's interest in protecting children. The Court found that both parents and children have a mutual interest in the preservation of family integrity. It also recognized case law demonstrating that inadequate representation of children in termination of parental rights proceedings can adversely affect parental rights. It therefore concluded that parents have standing to challenge the effectiveness of their children's legal representation.

The Court next considered the parents' claim that when a trial court has

reason to believe that a child's wishes are different than the position being advocated by his or her attorney, the court has an independent obligation to intervene and appoint separate counsel. It noted that in criminal cases, Connecticut statute creates a duty for the trial court to inquire about a conflict of interest in two circumstances: 1) when there has been a timely conflict objection at trial or 2) when the trial court knows or reasonably should know that a conflict exists. The Court examined the state statute addressing the dual role of counsel appointed to represent children in termination proceedings. That statute authorizes the court to appoint counsel to represent the child and to act as a guardian *ad litem*. The statute provides that the primary role of counsel for a child is to advocate

for their client in accordance with the Rules of Professional conduct. If a conflict arises between the child's wishes and the position being advocated by the attorney, the court is directed to appoint another person to act as the child's guardian ad litem.

During a three-day evidentiary hearing, Christina's attorney argued that termination of the respondent parents' rights was in the best interest of the children, including Christina. The parents alleged that the court had reason to know that Christina's wishes were different from the attorney's position. At issue were statements made by Christina to her court-appointed psychologist during a clinical interview. The psychologist filed a report to the court stating that in January, 2003 Christina had stated she wanted

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to “go home with mommy and daddy.” The report also stated that Christina had indicated that her parents were important to her, and that she could not imagine living without them. However, at the trial in December, 2003, the trial court heard conflicting testimony from Christina’s foster mother. The foster mother testified that Christina had told her that she wanted to remain with them [the foster parents] forever. Thus, the Court found that the record

was not sufficient to demonstrate that Christina’s attorney was advocating for a position contrary to her wishes or that the trial court knew or should have known a conflict existed.

Because the Court found that the record was insufficient to determine whether the trial court knew or should have known a conflict existed, it declined to consider whether children have a constitutional right to effec-

tive counsel in termination of parental rights proceedings.

The NACC joined the Center for Children’s Advocacy, Inc. as amici curiae in this case arguing that in proceedings to terminate parental rights, children have federal and state constitutional rights to due process of law and are entitled to the appointment of counsel. ■

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Federal Policy Update

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

Outlook for End of 109th Congress and Newly-Elected 110th Congress

Congress will return in mid-November for their post-election “lame duck” session. On the top of their agenda will be the completion of spending legislation for FY07, which began October 1, 2006. (The federal government agencies for which appropriations bills have not yet been passed — every agency except Defense and Homeland Security — have all been operating under a continuing resolution since September 30, 2006; the current continuing resolution expires 11/17/06.) Completion of appropriations may occur through an “omnibus” appropriations bill, rather than passage of each individual spending bill. Few non-appropriations bills are expected to be completed during the “lame duck,” although the Second Chance Act (offender reentry legislation) may move forward.

Impending major changes in Congress as a result of the recent elections make it more difficult than usual to make accurate predictions at this time about

the outlook for the 110th Congress. Control of the House of Representatives will shift to the Democrats, under the leadership of Speaker-designee Nancy Pelosi (D-CA), who will take control over the House floor agenda from Speaker Hastert (R-IL). All Committee gavels will switch to Democratic hands, expected to include: David Obey (D-WI) as Chair of Appropriations; John Spratt (D-SC) as Budget Chair; George Miller (D-CA) as Chair of Education and the Workforce; Charles Rangel (D-NY) as Ways and Means Chair; and John Conyers (D-MI) as Judiciary Chair. Control of the Senate will shift to the Democrats, under the leadership of Majority Leader-designee Harry Reid (D-NV), who will take control over the Senate floor agenda from Majority Leader Frist (R-TN). All Committee gavels will switch to Democratic hands, expected to include: Robert Byrd (D-WV) as Chair of Appropriations; Kent Conrad (D-ND) as Budget Chair; Edward Kennedy (D-MA) as Chair of Health, Education, Labor and Pensions; Max Baucus (D-MT) as Finance Chair; and Patrick Leahy (D-VT) as Judiciary Chair.

The policy agenda for the 110th Congress will include FY08 budget and appropriations, completion of unfinished business from the prior Congress (including Head Start reauthorization), and other reauthorizations of programs due to expire on October 1, 2007, including the No Child Left Behind elementary and secondary education law, the State Child Health Insurance Program, and the formula state grants under the Juvenile Justice and Delinquency Prevention Act (Title II). The Democratic Leadership will also likely take up legislation to increase the minimum wage early next year.

Federal Budget for FY 2007

On February 6, 2006, President Bush submitted his proposed FY 2007 Budget to Congress. It included another proposal for a foster care funding cap (similar to prior years’ budget proposals), and included stagnant or slightly declining funding for most programs relevant to court-involved children and families, with a deep cut in the Social Services Block Grant (cutting \$500 million, to

take the program from \$1.7 billion to \$1.2 billion). Once again, the largest percentage cuts are in the area of juvenile justice and delinquency prevention (a 43% cut from last year's juvenile justice funding levels).

On March 10, the Senate Budget Committee adopted a budget that was very similar to the President's proposal, but on March 16 Senators Specter and Harkin offered a floor amendment to increase "advance appropriations" in order to increase funding by \$7 billion for health, education, and social services within the Labor/HHS/Education Appropriations Subcommittee that they lead. That amendment (which actually just restored funding to the FY05 levels) passed with an overwhelming bipartisan majority of 73-27. The Senate also approved, by unanimous consent, a more modest Kohl/Biden amendment to restore \$380 million in proposed cuts to juvenile justice funding. Then, later on March 16, the Senate passed the budget resolution.

The House, after a few false starts (during which appropriators were rebelling against attempts in the budget to rein in their authority, and some moderate Republicans were trying to increase funding for areas affected by the Specter/Harkin Senate amendment), adopted on May 18 (by a vote of 218-210) a budget that includes some increases in discretionary spending above the President's budget, but falls far short of the Specter/Harkin funding levels. There will not be a final House/Senate negotiated agreement on the FY07 Budget Resolution, and the House and Senate have moved forward on FY07 appropriations bills (including the bills for Labor/HHS/Education and Justice).

Federal Appropriations for FY 2007

The Senate Labor, Health and Human Services, Education Appropriations Subcommittee was allocated \$5 billion more than under the President's proposal, but that is still \$2 billion short of the amount promised in the Specter/Harkin amendment. On July 20, 2006, the Senate Appropriations Committee approved the L/HHS/Ed bill (S. 3708), which includes funding for Head Start and child abuse prevention. Most programs (including the

Social Services Block Grant) received the same funding levels as last year — a cut in services for kids/families when inflation is considered. However, discretionary funding for the Promoting Safe and Stable Families child/family services program was cut by \$14 million (from \$89 million to \$75 million). Timing for Senate floor action on the L/HHS/Ed bill is uncertain.

The House Appropriations Committee marked up its L/HHS/Ed bill (H.R. 5647) on June 13th, based on a Subcommittee allocation that was \$4 billion more than the President proposed, but \$3 billion short of the Specter/Harkin amendment level that House moderates had been advocating. In the L/HHS/Ed bill, which includes funding for Head Start and child abuse prevention, most programs (including the Social Services Block Grant) received the same funding levels as FY06 — a cut in services for kids/families when inflation is considered. L/HHS/Ed House floor action timing is uncertain. L/HHS/Ed funding levels will likely be finalized during the post-election "lame duck" session in November/December.

The full House approved the appropriations bill (H.R. 5672) that funds the Department of Justice, including juvenile justice and delinquency prevention on June 29, 2006. Most, but not all, of the proposed juvenile justice cuts were rejected. The Senate Appropriations Committee approved their bill (H.R. 5672) on July 13th, rejecting most, but not all, of the Administration's proposed delinquency prevention cuts. Senate floor action has not been scheduled.

Reauthorization of "Promoting Safe and Stable Families"

On September 28, 2006, President Bush signed into law a renewed ("reauthorized") federal "Promoting Safe and Stable Families" program (PSSF). Through this continuing federal funding stream, states must spend a "significant portion" (which has been interpreted as at least 20%) of their funds on each of four service categories:

- *Family preservation services.* Services designed to help families at risk or in crisis, including services to (1) help reunify children with their families when safe and appropriate;

(2) place children in permanent homes through adoption, guardianship, or some other permanent living arrangement; (3) help children at risk of foster care placement remain safely with their families; (4) provide follow-up assistance to families when a child has been returned after a foster care placement; (5) provide temporary respite care; and (6) improve parenting skills.

- *Family support services.* Community-based services to promote the safety and well-being of children and families designed to increase the strength and stability of families, to increase parental competence, to provide children a safe and supportive family environment, to strengthen parental relationships, and to enhance child development. Examples of such services include parenting skills training and home visiting programs for first time parents of newborns.
- *Time-limited family reunification services.* Services provided to a child placed in foster care and to the parents of the child in order to facilitate the safe reunification of the child within 15 months of placement. These services include counseling, substance abuse treatment services, mental health services, and assistance to address domestic violence.
- *Adoption promotion and support services.* Services designed to encourage more adoptions of children in foster care when adoption is in the best interest of the child, including services to expedite the adoption process and support adoptive families.

In July 2006, the Senate and the House approved their respective versions of bipartisan five-year PSSF reauthorization legislation (S. 3525). The bills mostly followed the recommendations of the Administration (when a representative of the U.S. Department of Health and Human Services testified before the Senate Finance Committee recently): no major changes to the basic Promoting Safe & Stable Families program, and a continuation of the \$40 million per year mandatory funding increase that was initiated as a small "silver lining" in the winter's spending cuts reconciliation bill.

However, the Senate (unlike the Administration) wanted to designate the new \$40 million in mandatory funds for a child protection national-competition grants program targeted towards children affected by parent/guardian methamphetamine abuse. The bill also included provisions for increased accountability for fund expenditures, increased tribal access, and a voucher approach to the Mentoring Children of Prisoners program (similar to an HHS proposal).

The House members wanted to designate the new \$40 million in mandatory funds to states to ensure monthly caseworker visits with children in foster care and for caseworker training and other workforce strengthening efforts. The House members also included some modifications to "Child Welfare Services" (IV-B, Subpart I), including limiting administrative uses of funds (but excluding caseworkers doing work on their cases from the definition of administrative uses of funds).

Thankfully, the House and Senate were able to resolve their differences before Congress left town at the end of September, and they sent a final PSSF reauthorization bill — including the \$40 million per year over five years in additional mandatory funding, utilizing language that blends the Senate's substance abuse approach with the House's caseworker visits approach (and blends other aspects of both bills) — to the President for enactment (P.L. 109-288).

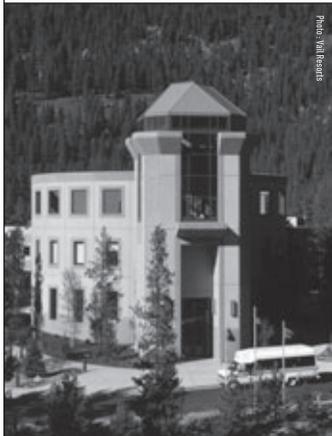
Sex Offender Registry and Child Abuse/Neglect Registry Legislation

After extensive behind-the-scenes House/Senate negotiations, the Senate passed H.R. 4472 on July 20, 2006, the House passed it on July 25, and the President signed it into law (P.L. 109-248) on July 27. The legislation, as enacted, establishes both a national sex offender registry (including for some juveniles age 14 or over who are adjudicated

for aggravated sexual abuse), and a national registry of substantiated cases of child abuse and neglect. Expected state-to-state variations and implementation challenges regarding the national child abuse and neglect registry were brought to the attention of Senators and Representatives, but the provisions were retained in the final package.

Gangs Legislation

On May 11, 2005, 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



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in this session of Congress, and no markup is scheduled at this time.

Unaccompanied Alien Children Protection Legislation

On December 22, 2005, the Senate 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. The House bill (H.R. 1172) has not yet moved forward in the House Judiciary Committee.

Second Chance Act (Juvenile and Adult Offender Reentry) Bill

H.R. 1704, introduced by Rep. Portman et al. on April 19, 2005, 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, S. 1934, was introduced on October 27, 2005 by Senators Brownback, Biden, Specter, DeWine, et al. The House Judiciary Subcommittee on Crime marked-up H.R. 1704 on February 15, 2006 and the full Judiciary Committee marked up a revised bill on July 26. Timing for House floor action and Senate Judiciary Committee action is unknown; there is some chance the legislation could be added as a rider to other legislation.

Safe and Timely Interstate Placement of Children

H.R. 5403, a bill to promote the safe and timely interstate placement of foster children, was introduced by Rep. Tom DeLay (R, TX) on 5/17/06, passed in the House under "suspension of the rules" on 5/24/06, passed by the Senate by unanimous consent on 6/23/06 and signed into law by the President on 7/3/06 (P.L. 109-239). Inter alia, the law

requires states to conduct and report on interstate home studies within 60 days, and directs the Secretary of Health and Human Services to make grants for timely interstate home study incentive payments to states.

Indian Child Protection and Family Violence Prevention

On May 18, 2006, the Senate Committee on Indian Affairs approved S. 1899, a bill to amend the Indian Child Protection and Family Violence Prevention Act. The bill was agreed to by the full Senate, by unanimous consent, on 8/3/06. 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.

Other Relevant Bills Introduced, But No Further Action Yet

- On February 15, 2005, 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. No further action has been scheduled, although Rep. Ramstad introduced a slightly modified version of the Keeping Families Together Act on July 13, 2006 (H.R. 5803).
- On May 10, 2005, 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 Finance Committee action has yet been scheduled.
- On July 20, 2005, 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 in the Senate Health, Education, Labor and Pensions Committee.

- On July 29, 2005, 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 2005. The House Education Reform Subcommittee held an excellent hearing on September 27, 2006, but no further action on this legislation has yet been scheduled.
- S. 1679, introduced on September 12, 2005 by Senators DeWine and Rockefeller, is the "Working to Enhance Courts for At-Risk and Endangered Kids Act". The bill would provide for, inter alia, collaboration between child welfare agencies and courts, practice standards for child welfare state agency attorneys, loan forgiveness for child welfare attorneys and social workers, permission for states to allow public access to child welfare court proceedings (as long as state policies ensure the safety and well-being of the child, parents, and family), and improvements in the safe and timely interstate placement of foster children. No action has yet been scheduled in the Senate Finance Committee, though provisions similar to some of those in this bill were included in budget reconciliation legislation (see Federal Policy Update in Spring Guardian issue).

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



Children's Law News

News

NACC Child Welfare Law Attorney Specialty Certification is now open in 4 States: California, Michigan, New Mexico, 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 go to:

<http://www.naccchildlaw.org/training/certification.html>.

NACC Call for Abstracts. The NACC is soliciting abstracts for presentations at its 30th National Children's Law Conference, August 15-18, 2007 at Keystone Mountain Resort, Keystone, CO. For more information please visit: www.naccchildlaw.org/training/conference.html. Submissions must be postmarked by February 1, 2007.

NACC 2007 Outstanding Legal Advocacy Award. Nominations for the 2007 Outstanding Legal Advocacy Award are now being accepted. The award is given annually to individuals and organizations making significant contributions to the well-being of children through legal representation and other advocacy efforts. Send nomination letter and supporting documentation to NACC Awards, 1825 Marion Street, Suite 242, Denver, CO 80218. Contact the NACC for more information. The deadline is June 1, 2007.

NACC 2007 Law Student Essay Competition. The NACC is now accepting submissions for the 2007 Law Student Essay Competition. The winning essay will be published in the 2007 Children's Law Manual, and the winner will be given \$1,000, a one-year NACC membership, and a scholarship to the 2007 conference in Keystone, CO. Essays will be evaluated on the importance of the topic to advancing the legal interests of children, persuasiveness, and quality of research and writing. Essays should be submitted electronically to: advocate@NACCchildlaw.org by June 1, 2007.

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."

Conferences & Training

The NACC's premier training each year is the National Children's Law Conference. The 2006 National Children's Law Conference was held in Louisville, Kentucky this fall with over 400 NACC members from 40 states, the District of Columbia, Canada, and Puerto Rico in attendance. The 2006 Children's Law Manual from the conference is available for purchase in the publications section. NACC members are encouraged to make plans to attend the 2007 national conference in Keystone, Colorado, August 15-18, 2007.

December 13-15, 2006

Beyond the Bench XVII: Sharing Responsibility for Our Children, Judicial Council of California, Center for Children, Families, and the Courts, Monterey, CA.

May 21-25, 2007

NACC 12th Annual Rocky Mountain Child Advocacy Training Institute, Louisville, CO. A hands-on trial skills training course for lawyers who represent the interests of children. Presented in conjunction with NITA and the Rocky Mountain Children's Law Center. Brochures will be mailed to all NACC members in early 2007. For more information, please visit www.naccchildlaw.org/training/RMCATI.html.

August 15-18, 2007

NACC 30th National Children's Law Conference, Keystone, CO. For more information, contact the NACC or visit: www.NACCchildlaw.org/training/conference.html.

Conference Brochures will be available in Spring, 2007.

Publications

Nevada Law Journal, Special Issue on the Legal Representation of Children, Volume 6, Number 3, Spring 2006. This is the comprehensive (1400 page) publication by the University of Nevada Las Vegas Law School, memorializing the "10 years After Fordham Conference." For more information go to: <http://rcif.law.unlv.edu>.

The Specialized Practice of Juvenile Law: Model Practice in Model Offices, the 2006 Edition of the NACC Children's Law Manual Series is now available for purchase. Copies may be ordered from the NACC by calling toll free 1-888-828-NACC, using the Publications Order Form in this issue, or online at www.naccchildlaw.org/training/manuals.html.

Child Protection in America: Past, Present, and Future, by John E.B. Myers. Oxford University Press. (800) 451-7556 or www.oup.com/us.

Best Practice Guidelines for Serving LGBT Youth in Out-of-Home Care. This new book contains the first-ever set of comprehensive recommendations about how child welfare and juvenile justice professionals can best serve and work with LGBT youth in state care. Published by the Child Welfare League of America, this guide was developed through collaboration between Legal Services for Children and the National Center for Lesbian Rights. A PDF version can be downloaded from Legal Services for Children (<http://www.lsc-sf.org>) and hardcopies can be purchased from CWLA, www.cwla.org or 800-407-6273.

Achieving Permanency for Adolescents in Foster Care: A Guide for Legal Professionals. This recent release from ABA Center on Children and the Law addresses the legal, medical,

psychological, economic and social issues that often pose challenges to teens seeking permanent families. This book offers practical strategies for agency attorneys, children's representatives, parents' attorneys and judges. Available online at www.ababooks.org or by calling 800-285-2221 (Order #349-0001).

Child Welfare Information

Gateway. The Children's Bureau is pleased to announce the opening of Child Welfare Information Gateway (www.childwelfare.gov). Child Welfare Information Gateway consolidates and expands upon the services formerly provided by the National Clearinghouse on Child Abuse and Neglect Information and the National Adoption

Information Clearinghouse to provide easy access to programs, research, statistics, laws, policies, and training resources all in one place.

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

Jobs

Family Permanency Project Staff Attorney, Children's Law Center, Washington, D.C. The Children's Law

Center (CLC) (Washington, DC) invites applications for a staff attorney to join our Family Permanency Project immediately. The staff attorney will represent foster parents and relative caregivers in adoption, guardianship, and custody proceedings. Applications should include a cover letter, current resume, legal writing sample, and list of references. DC Bar membership (or eligibility for DC Bar membership based on waiver) is required. No phone calls please. Applications should be submitted to: FPP Staff Attorney Selection Committee, The Children's Law Center, 901 15th Street, NW, Suite 500, Washington, DC 2005, jobs@childrenslawcenter.org, fax 202-467-4949. ■

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



2007 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 1, 2007.

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

Thank You

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

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NACC – Membership Application

I wish to become a member.

INDIVIDUAL MEMBERSHIPS:

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

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

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

GROUP MEMBERSHIPS:

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

- Please send information on establishing an affiliate.**

Make Check Payable to: NACC

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

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

Federal Tax ID#: 84-0743810

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

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