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IN THIS ISSUE

- 1 A MESSAGE FROM THE NEW
NACC BOARD CHAIR
- 3 CASES
Arizona Court Reverses Termination
Due to Ineffective Assistance
of Counsel for Mother
NACC Participates as Amicus Curiae
in U.S. Supreme Court Child Soldier
Guantanamo Bay Detention Case
- 10 THE CHILD WELFARE LAW
SPECIALIST COLUMN
- 14 CHILDREN'S LAW NEWS
- 16 AFFILIATE NEWS
NACC Charters Nevada Affiliate
- 16 2008 CONFERENCE
CALL FOR ABSTRACTS

NACC
30
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Table of Contents

A MESSAGE FROM THE NEW NACC BOARD CHAIR ----- **1**

CASES ----- **3**

 Dependency / Parent's Counsel (Arizona) ----- 3

 Education / 14th Amendment (Supreme Court) ----- 3

 Education / 1st Amendment (Supreme Court) ----- 4

 Delinquency / Visitation (California) ----- 6

 Family Law / Father's Rights (Florida) ----- 6

 Delinquency / Waiver of Counsel (Nebraska) ----- 7

 Mandatory Reporting / Standard of Care (Minnesota) ----- 8

 NACC Amicus Curiae Case: Child Soldier Detention (Supreme Court) ----- 9

NACC PUBLICATIONS ORDER FORM ----- **5**

THE CHILD WELFARE LAW SPECIALIST ----- **10**

FEDERAL POLICY UPDATE ----- **12**

by Miriam Rollin

CHILDREN'S LAW NEWS ----- **14**

 News, Publications, Training, and Jobs

AFFILIATE NEWS ----- **16**

2008 CONFERENCE CALL FOR ABSTRACTS ----- **16**

NACC CONTRIBUTORS ----- **17**

NACC MEMBERSHIP APPLICATION ----- **BACK PAGE**

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THE GUARDIAN
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN



A Message From the New NACC Board Chair

JOHN STUEMKY, MD

Chair — NACC Board of Directors

It is an honor to serve as the Chair of the NACC Board of Directors, and I thank you all for the opportunity. As a pediatric physician, I find myself in a unique position chairing an organization comprised primarily of attorneys devoted to the provision of legal services. Yet I believe in the mission of the NACC, and I pledge my service to the organization. You may wonder how a physician came to this place. The answer is simple. I went to a conference in Keystone, Colorado.

I had been attending the famous Keystone Conferences on Child Abuse and Neglect sponsored by the Kempe Center and the Department of Pediatrics of the University of Colorado in the 1970s. It was there that I discovered the NACC. Not only did I have the opportunity to participate in workshops, meetings, and lectures with the giants of medicine who helped our society recognize child abuse and neglect (Drs. Ray Helfer, Henry Kempe, and others), but I also came to know members of the legal profession, including Denver Judge Steven Delaney and Donald Bross. These two lawyers and a small group of colleagues in Denver, with the encouragement of Dr. Kempe, founded the NACC in 1977. It was simply understood by all of us, even in the early days, that combating child abuse and neglect, as well as serving families in crisis, required a multidisciplinary response led by doctors and lawyers. So I was here at the beginning of NACC, and I never lost contact.

In 1975, I was a new and very junior faculty member in General Pediatrics and Pediatric Emergency Medicine at the University of Oklahoma at the Children's Hospital. My Department Chair asked me to start and implement a multidisciplinary Child Protection Team. At that time, I had no idea what a child protection team was or how one would function within a children's hospital. The state of Oklahoma was struggling with issues about how to recognize and handle child abuse and neglect through the DHS Child Welfare Division, the courts, and other state agencies. It had only been 12 years since Dr. Kempe published his famous *Battered Child Syndrome* paper. Our medical community was just beginning to identify and recognize the abused and neglected child, and we were trying to understand how the medical community fit in the larger child protection system.

So I went in search of other Child Protection Teams. I could find only two other such teams; one at the University of Colorado, which had been started by Dr. Kempe years before, and one at the University of Arkansas, which had been founded several months before my search. We modeled our new Team on these two. With the assistance of a very committed Oklahoma City Juvenile Judge and the support from our state's DHS Child Welfare Division, our Team began to flourish.

And of those lawyers I met at Keystone, I was particularly intrigued by the enthusiasm of Don Bross, an attorney whose faculty appointment was within the Department of Pediatrics in Colorado's College of Medicine. The field of Children's Law was not even a recognized area of law but his passion for it was contagious. He participated in our first state conference on abuse and neglect and was a big help to us.

I am now the Medical Director of the Children's Hospital at the OU Medical Center, and our Child Protection Team continues to meet weekly. We now staff over 500 cases each year, and our Team is truly multidisciplinary – we have representatives from Child Welfare and hospital-based Social Services, medical and nursing staff, the public defender and district attorneys offices, and law enforcement. We also work with a group of committed attorneys, Oklahoma Lawyers for Children, who have improved the quality and effectiveness of legal representation for children in our state.

Stepping back from my experiences in Oklahoma, and looking at the national field of child advocacy and law, I can appreciate the development of the NACC over the years and the impact this organization has made on the discipline. I have been on Board of Directors now for 12 years, and it has been exciting to watch the growth of the NACC during my tenure. The NACC membership has expanded and the quality of the educational and outreach programs offered has grown. The changes I have seen while on the Board are due to the efforts and leadership of a uniquely talented CEO, Marvin Ventrell, and the committed staff he has assembled. The NACC has come into its own in recent years, is recognized as a national leader, and I believe represents to Child Law attorneys what the American Academy of Pediatrics represents to pediatricians.

Indeed, pediatricians and children's lawyers have much in common. We both remain the lowest paid specialty within our respective fields, enjoying large case loads, dealing with families, and working with multidisciplinary groups. The exciting and rewarding aspects of our professional experience are similar: interacting with the many disciplines that allow us to better serve our clients/patients through meshing with medicine, law, and state and national agencies and organizations.

After over 30 years of involvement within the field of child abuse and neglect, I am absolutely convinced that we are on the verge of a paradigm shift within this field that will improve the lives of children. Even though the American Board of Pediatrics is close to creating its newest subspecialty in the field of abuse and neglect, medicine will not be the discipline responsible for the next great stride in the walk towards a healthier, safer

place for our children. I am convinced that step will be made by attorneys with the skills and expertise to effectively represent our clients. The scope of practice in the field of abuse and neglect may have begun in medicine, but the biggest impact on the future will come from the legal profession.

The NACC is the national leader in this move and I feel honored and challenged by my new role for the coming term. I acknowledge the many talented lawyers who have preceded me as Board Chair and thank them for their

work. I am especially thankful to the immediate outgoing Chair, Christopher Wu, for his leadership and assistance with the transition.

It seems appropriate that I began this opportunity as Board Chair on the 30th Anniversary Year of the NACC during its National Conference in Keystone, Colorado where I first learned about the NACC that many years ago. It was meaningful seeing so many of you there, learning and teaching each other. To all of the NACC members, kindest regards and best wishes for our continued success. ■

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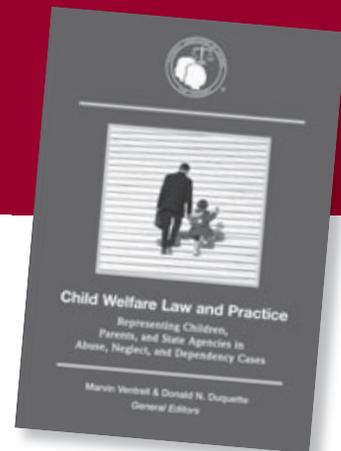
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Cases

Dependency / Parent's Counsel

Arizona Court Of Appeals Reverses Termination Of Parental Rights Order Due To Ineffective Assistance Of Counsel For The Respondent Mother. Donald W., Sr. and Robin C. v. Arizona Dep't of Econ. Sec. and Donald W., Jr., 159 P.3d 65 (Ariz. App. 2007).

The Arizona Court of Appeals held the Mother's appointed counsel was ineffective in a termination of parental rights hearing; thus, the proceeding was fundamentally unfair in violation of due process.

In February 2007, the Arizona Department of Economic Security (ADES) moved to terminate Mother's and Father's parental rights. ADES alleged that Mother and Father had substantially neglected or willfully refused to improve the situation that led to out-of-home placement of Child, and that Child had been in out-of-home placement for nine months or longer. Additionally, CPS filed a report with the juvenile court stating that both Mother and Father were not compliant with their treatment plans. The juvenile court granted the motion to terminate both Mother's and Father's rights; both parents appealed. Father and Mother both asserted there was insufficient evidence to support the juvenile court's order terminating parental rights. Additionally, Mother argued she was denied effective assistance of counsel.

The Court addressed Father's appeal first and held that the juvenile court record indicated that CPS made diligent efforts to reunify Father and Child, and that Father substantially neglected or willfully refused to remedy the circumstances leading to Child's out-of-home placement. The Court found no clear error in the juvenile court's order terminating Father's parental rights to Child and upheld the termination order.

Addressing the Mother's appeal, the Court held that regardless of whether there was sufficient evidence in the record to support the termination order, Mother's ineffective assistance of counsel created a question regarding the fairness of the proceedings, as well as the outcome.

The standard for determining what constitutes ineffective assistance of counsel in termination proceedings was an issue of first impression in Arizona. Both Mother and ADES supported an analysis under the *Strickland* test. Under that test, assistance of counsel may be found ineffective if counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment," and it prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668 (1984). This Court held that the *Strickland* standard is inappropriate in termination proceedings because termination proceedings are civil rather than criminal in nature. Rather, the standard should concentrate on the quality of assistance that is required to satisfy due process; in other words, what fundamental fairness demands in a particular situation.

The Court recognized that some jurisdictions that have adopted the fundamental fairness standard for measuring ineffective assistance of counsel also require a showing of prejudice similar to the prejudice requirement in the *Strickland* test. This Court rejected the additional requirement essentially because "if counsel is ineffective, no fair trial has been received and the prejudice is the lack of a fair trial."

The Court listed factors to consider when determining whether representation meets the fundamental fairness / due process standard: active participation in every critical stage of the proceedings; investigation of the procedural and factual history of the

case; contact with the client; contact with witnesses prior to the hearing; review of documents pertaining to the case and the case file; and efforts at procuring evidence in support of the parent's defense. In sum, "if counsel's assistance or lack thereof deprived the parent an opportunity to be heard meaningfully, the parent received ineffective assistance of counsel."

According to the record, counsel did not perform an independent investigation. Counsel was unfamiliar with the case and likely did not prepare for the hearing; counsel had to inquire as to the grounds alleged for the termination before he cross-examined the State's witness. The record clearly indicates that counsel did not maintain adequate contact with Mother. Additionally, comments made by Mother's counsel concerning Mother's sobriety and failure to attend a drug test, before the issue was raised by the adverse parties, were "unnecessary, derogatory, and further served to indicate that Mother was irresponsible..."

The Court reiterated that counsel has an ethical obligation to competently represent the client with reasonable diligence and to maintain proper communication with the client. "When her counsel did not undertake the efforts necessary to speak meaningfully on her behalf, and instead actually spoke against her, the juvenile court became an inquisitorial, rather than adversarial, system of prosecution directed at her."

The Court concluded that given counsel's ineffective representation, the proceeding to terminate Mother's parental rights was not fundamentally fair. The Court vacated the termination order.

Education / 14th Amendment

United States Supreme Court Holds School District Admission Plans

Based On Race Violate The 14th Amendment's Equal Protection Clause. Parents Involved In Community Schools v. Seattle School Dist. No. 1, et al.; Crystal D. Meredith v. Jefferson County Bd. of Educ., et al. 127 S. Ct. 2738 (2007).

In two separate cases, parents filed suit against public school districts in Seattle, Washington and Louisville, Kentucky challenging the school districts' admission plans which relied upon race in determining which school students would attend.

Seattle School District No. 1 includes ten public high schools. The school district's plan allowed incoming freshman to choose among any of these schools. If one school was oversubscribed, the district used a series of "tiebreakers" to determine admission. The first tiebreaker was whether the student had a sibling currently enrolled at the school. The second tiebreaker depended on the racial makeup of the desired school and the student's race. More specifically, if an oversubscribed school was not within 10 percentage points of the district's overall racial balance (41% white, 59% nonwhite), the school would admit the student that would "serve to bring the school into balance."

The Louisville school district, Jefferson County Public Schools, operated a segregated school system until 1973, when a federal court issued a desegregation decree. In 2000, the decree was dissolved upon a finding that the school district had "achieved unitary status" by eliminating the prior policy of segregation. In 2001, the school district instituted a plan whereby all district schools were required to maintain a black student population of between 15%–50%. According to the plan, "if a school has reached the extremes of the racial guidelines, a student whose race would contribute to the school's racial imbalance will not be assigned there."

In this case, the Petitioner parents claimed that assigning children based on race violates the Fourteenth Amendment's Equal Protection clause. In both cases the District Court found for the school districts, and both decisions were upheld at the appellate level.

After establishing that the U.S. Supreme Court had jurisdiction, Chief Justice Roberts began by reiterating

that government classifications based on race must be reviewed under a strict scrutiny analysis. In order to meet this standard of review, the school districts were required to demonstrate that the use of racial classifications was "narrowly tailored" to achieve a "compelling" government interest. The Supreme Court noted that previous cases involving the use of racial classifications in the education context have identified two interests rising to the "compelling" level: (1) remedying the effects of past intentional discrimination, and (2) promoting diversity in higher education.

Neither school district claimed to be remedying effects of past intentional discrimination. In considering the second interest, promoting diversity, the Court turned to its opinion in *Grutter v. Bollinger*, 539 U.S. 306 (2003). In *Grutter*, the diversity interest centered not only on race, but included "all factors that may contribute to student body diversity." The Supreme Court further emphasized that the use of race upheld in *Grutter* was only part of a "highly individualized holistic review" which considered each applicant as an individual, not solely as a member of a certain racial group. In contrast, the Seattle and Louisville school districts' plans used race as the determinative factor, rather than as part of a broader scheme. The Court further distinguished *Grutter* from the present cases, noting that *Grutter* involved post-secondary education, a context different from the elementary and high schools involved in this case.

Both school districts also claimed that additional compelling interests supported their admission plans, including: (1) "reducing racial concentration in schools," (2) "ensuring that racially concentrated housing patterns do not prevent nonwhite students from having access to the most desirable schools," and (3) "educating students in a racially integrated environment." The Court rejected these claims, holding that the school districts' plans were not narrowly tailored to achieve the stated goals. In particular, the Court noted that the minimal impact of the districts' plans suggested that other means could have been employed to accomplish the goals. In addition, the school districts provided no evidence demonstrating that other methods were even considered.

The Supreme Court also expressed its concern with racial balancing and stated, "Working backward to achieve a particular type of racial balance, rather than working forward from some demonstration of the level of diversity that provides the purported benefits is a fatal flaw under our existing precedent." The Court continued by stating, "Racial balancing is not transformed from 'patently unconstitutional' to a compelling state interest simply by re-labeling it 'racial diversity.'" Therefore, the Court invalidated the school district's desegregation plans and reversed the judgments of the Courts of Appeals for the Sixth and Ninth Circuits.

Education / 1st Amendment

United States Supreme Court Rules That Schools May Restrict Student Speech Based On the Unique Characteristics of the School Environment And The Government Interest In Preventing Student Drug Use. Morse et al. v. Frederick, 127 S. Ct. 2618 (2007).

The issue decided by the United States Supreme Court was whether, pursuant to the First Amendment, a principal may restrict student speech at a school event when that speech is reasonably viewed as promoting drug use.

The Olympic Torch Relay passed through Juneau, Alaska on its way to Salt Lake City, Utah in January, 2002. Deborah Morse, principal of Juneau-Douglas High School allowed teachers and students to leave class to watch the relay. As the torchbearers and camera crews passed by, Joseph Frederick and his friends, seniors at Juneau-Douglas High School, unrolled a 14-foot banner that stated: "BONG HiTS 4 JESUS." Principal Morse demanded that the students take the banner down. All the students obeyed except Frederick. The banner was confiscated and Frederick was suspended.

The Juneau School District and the Board of Education upheld Frederick's suspension. Frederick then filed suit under 42 U.S.C. § 1983 alleging that the school board and Principal Morse violated his First Amendment rights. The District Court granted summary judgment for the school board and Principal Morse holding that they were entitled to qualified immunity and that they had not violated Frederick's First

Amendment rights. The Ninth Circuit reversed and held Frederick's First Amendment rights were violated.

The Supreme Court stated that although "students do not shed their constitutional rights to freedom of speech or expression at the school-house gate," *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), the "constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings." *Bethel School District v. Fraser*, 478 U.S. 675 (1986).

In *Tinker*, school officials adopted a policy prohibiting students from wearing armbands after learning of the students' plan to wear armbands in protest of the Vietnam War. The students that wore armbands were suspended; they sued and claimed their First Amendment rights had been violated, and the Supreme Court agreed. *Tinker* held that student expression may not be suppressed unless school

officials reasonably conclude that it will "materially and substantially disrupt the work and discipline of the school."

In *Fraser*, a student was suspended for a speech he gave at a school assembly which included "an elaborate, graphic, and explicit sexual metaphor." *Fraser* established that constitutional rights of students in public schools are not equal to the rights of adults in other settings. Specifically, while in school, students' First Amendment rights are restricted in light of the "special circumstances of the school environment."

The Supreme Court then compared the student speech cases with cases analyzing a student's Fourth Amendment rights. In this context, the Supreme Court has recognized that "the nature of these rights is what is appropriate for children in school." *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995). In particular, "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily

subject." *New Jersey v. T.L.O.* 469 U.S. 325 (1985). In analyzing these Fourth Amendment cases, the Supreme Court recognized that drug abuse by American youth is a serious problem and that deterring drug use by school children is an "important — indeed, perhaps compelling interest." *Vernonia*.

The Court noted that student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, poses a particular challenge for school officials working to protect those entrusted to their care. Additionally, the "special circumstances of the school environment" and the governmental interest in preventing student drug use allows schools to restrict student speech and expression that they reasonably regard as promoting drug use.

Thus, the Court held the school officials did not violate Frederick's First Amendment rights. The Court concluded that it was reasonable for Principal Morse to conclude that

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Frederick's banner encouraged illegal drug use in violation of the school policy. The Court reversed the Ninth Circuit and concluded that "the First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers" associated with drug use among school children.

Delinquency / Visitation

California Court Of Appeal, First District, Holds That Juvenile Has A Constitutional Right To Visitation By Family Members And That Trial Court Cannot Delegate All Decisions Regarding Visitation. In re James R., 153 Cal. App. 4th 413 (2007).

The California Court of Appeal addressed whether a juvenile placed out of the home due to a delinquency adjudication has a fundamental constitutional right to visitation by family members.

On December 16, 2005, James R. was adjudicated delinquent and found to be a ward of the juvenile court after pleading no contest to allegations of child sexual abuse and commission of a lewd act. The court placed James in the custody of a probation officer and ordered a family visit to occur that day. This was the only court order that addressed visitation. On January 18, 2006, James was placed in a residential sexual offender treatment program.

On May 26, 2006, the court held a review hearing. At this hearing, the court reviewed a report from the probation department recommending a permanency plan of return home / reunification. James' counsel informed the court that James' treatment program permitted visitation only once per month, and requested that the court order an increase in visitation. The court refused to do so, but requested more information from the program regarding its reasons for the limited visitation. The court also declined to make a finding regarding the probation department's "reasonable efforts" pending receipt of the additional information regarding visitation.

The treatment program responded to the court's inquiry in a letter outlining a general policy of being cautious with family visitation, and citing the fact that James had disclosed additional victims and was still considered a high risk. At the next review hearing

(June 23, 2006), James' counsel again requested that the court set a "mandatory minimum visitation schedule" for visits between James and his father. The court declined to alter the program's visitation schedule, and held that reasonable services had been provided. In particular, the court found that the reasons for limited visitation were rational and that visitation would increase at the appropriate time.

The permanency planning hearing was held on October 17, 2006, and James' counsel again requested increased visitation. The court refused to mandate visitation, deferring the decision to the treatment program. James appealed the orders from both the review hearing and the permanency hearing, challenging the court's reasonable services finding and failure to enter a visitation order.

The California Court of Appeal began by establishing that both parents and children have a fundamental right to the parent-child relationship. Restricted visitation affects this fundamental right. Fundamental rights may be limited only on the basis of a compelling interest. However, in this case, the Court of Appeal declined to address the substantive due process claim — whether one visit per month is insufficient to comply with due process, while two visits would be acceptable. The Court stated, "doubtless, at some point reduction of visitation to a level that actually *denies* the right or renders it illusory, would constitute denial of substantive due process, absent a case-specific compelling reason to so limit visitation." Here, the Court found that James had not asserted any specific detriment as a result of the limited visitation, and therefore, had not demonstrated a denial of due process.

The Court next addressed whether the trial court unlawfully delegated its power over visitation. In its analysis, the Court first distinguished between deciding *whether* visitation occurs, and deciding the *frequency* of visitation. Generally, courts are allowed to delegate determinations regarding the frequency of visitation, but not the decision on whether visitation occurs at all.

With regard to the review hearing on June 23, the Court found no unlawful delegation of judicial power. This conclusion was based on evidence that

although the court did not officially set visitation, the record demonstrated that all parties understood visitation was required, and that there should be a minimum of one visit per month. In addition, the court did not simply defer the visitation decision to the program, but articulated its reasons for the visitation schedule.

The Court reached a different conclusion, however, regarding the permanency hearing on October 17. At that hearing, the juvenile court again refused to set minimum visitation, despite indicating that more frequent visitation was warranted, because the court did not want to interfere with the treatment program's "point system." The Court of Appeal held that, "in so ruling, the [juvenile] court completely delegated to the program all determinations regarding visitation..." The Court went on to state that the California statute requires that reasonable efforts findings must be made on a case-by-case basis. At the permanency hearing, "the juvenile court did not make an individualized determination based upon the application of the program's policies to this minor, but appears to have completely deferred to the program on the question of visitation." The Court of Appeals held that in doing so, the juvenile court unlawfully delegated its judicial power over visitation. The decision of the juvenile court was reversed and remanded.

Family Law / Father's Rights

Florida Supreme Court Finds That Known, Unmarried Biological Fathers Must Be Provided With Notice Of The Adoption Plan And Statutory Requirements Prior To Termination Of Parental Rights. Heart of Adoptions, Inc. v. J.A., 2007 Fla. LEXIS 1236.

The question before the Florida Supreme Court was whether an unmarried biological father's rights may be terminated based on the father's failure to properly file a claim of paternity with the Florida Putative Father Registry.

J.A. is the alleged biological father of Baby H. Approximately two weeks prior to the birth of Baby H., an adoption agency, Heart of Adoptions, Inc., sent J.A. a certified letter, requesting that he contact them. Four days before the birth, J.A. received a second letter,

confirming a conversation between J.A. and the adoption agency, during which J.A. was informed that the birth mother planned to place the baby for adoption and that he was the possible biological father of the child. The letter also stated that J.A.'s failure to provide support for the birth mother during the pregnancy and for the child after birth could be used to demonstrate abandonment of the child. The letter did not inform J.A. that he was required to file a claim of paternity with the Florida Putative Father Registry in order to protect his right to notice and consent of the adoption.

On the day of Baby H.'s birth, J.A. filed a petition in the circuit court to determine paternity. The petition requested that the court "stop the mother from allowing the child to be adopted." The next day the mother gave her consent for adoption and placed the baby with Heart of Adoptions. On August 8, 2005, three days after the birth of Baby H., Heart of Adoptions filed a petition to terminate J.A.'s parental rights. The petition set forth several allegations, including a claim that J.A. was not entitled to object to termination of his rights because he "did not qualify as a person required to consent to an adoption" based on his failure to comply with statutory requirements, including the filing of a claim of paternity with the Putative Father Registry. At the termination hearing, the court agreed and held that J.A.'s consent to the adoption was not required based on the failure to file a claim of paternity with the Registry and failure to comply with other statutes. J.A. appealed the order terminating parental rights. The appellate court reversed, holding that the circuit court lacked authority to terminate parental rights, because an unmarried biological father is not a "parent." The appellate court also certified the question above.

Before the Florida Supreme Court, J.A. claimed that the adoption agency had a mandatory obligation to notify him of the Registry requirements. Heart of Adoptions argued that any notice on their part was discretionary. The Court began by analyzing the Florida Adoption Act. The Act states, "An unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the

responsibilities of parenthood, both during the pregnancy and after the child's birth." Therefore, an unmarried father must take certain steps to establish his parental rights, including the right to notice and consent of an adoption. One such step is timely filing a claim of paternity with the Florida Putative Father Registry. The claim must be filed prior to a petition for termination of parental rights and before the mother provides consent for adoption. Other requirements for unmarried, biological fathers include the filing of an affidavit stating the father is willing and able to care for the child and agrees to pay child support and other related expenses. Finally, a father who knew of the pregnancy must pay "a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth." A father who does not comply with these requirements is considered to have waived his rights to the child.

In evaluating the statute, the Court found that if service of the notice of adoption plan on an unmarried father was completely discretionary, other sections of the statute, such as the agency's duty to conduct a diligent search for potential, unmarried biological fathers, would be rendered meaningless. In addition, the Court noted that allowing the agency complete discretion regarding when to serve the notice of adoption plan on known fathers, may lead to disparate treatment of similarly situated individuals, raising due process concerns.

Therefore, the Court concluded that the legislature intended that an adoption entity "must serve a known, locatable, unmarried biological father with notice of the adoption plan." Such notice must advise the father of the requirement to file a claim of paternity with the Putative Father Registry within thirty days. The father must also be advised that if he wishes to contest the adoption plan, he must file an affidavit with the court. Once advised of these requirements, an unmarried, biological father must take the action necessary to preserve his rights in future termination or adoption proceedings.

In this case, J.A. was not advised of the statutory requirements, and he did not file a claim of paternity with the Registry. However, J.A. did file a

petition to determine paternity in the circuit court. The Court found that because J.A. was not given the required statutory notice, this action served as the legal and functional equivalent. With regard to the additional statutory requirements, the Court ordered that J.A. be provided the opportunity to comply on remand.

Delinquency / Waiver of Right To Counsel

Supreme Court of Nebraska Holds That Advisement Of The Dangers And Disadvantages Of Self-Representation Is Not Required For A Juvenile To Knowingly, Voluntarily, And Intelligently Waive His Right To Counsel. In re Dalton S., 730 N.W.2d 816 (Neb. 2007).

The Supreme Court of Nebraska affirmed the juvenile court's holding that a juvenile's waiver of counsel was voluntary, knowing, and intelligent despite the lack of a warning by the court of the dangers and disadvantages of self-representation.

As a young boy, Dalton was diagnosed as mildly mentally handicapped and suffering from bipolar disorder, attention deficit disorder, and post-traumatic stress syndrome. In March, 2005, when Dalton was 9 years old, a school-related incident led the Deputy County Attorney to file a petition alleging Dalton violated a city ordinance prohibiting disorderly conduct.

On April 4, 2005, Dalton attended the adjudication hearing with his mother. At the hearing, the court explained the charges and the consequences of adjudication. The court also notified Dalton of his right to present witnesses, to remain silent, to a speedy trial, and to an appeal. Lastly, the court informed Dalton of his right to counsel at all stages of the proceedings. When the court asked Dalton whether he wanted an attorney present, Dalton's mother instructed him, "You don't need a lawyer. Say no. Say it." Dalton responded that he did not want a lawyer. When asked a second time, Dalton and his mother responded again that they would proceed without counsel.

The court accepted Dalton's admission to the charges; however, the dispositional hearing was delayed six times over the next year. During this time, Dalton was placed with his uncle

who retained an attorney to represent Dalton. At the dispositional hearing on June 19, 2006, the court determined that Dalton should be placed in treatment foster care. Dalton appealed, claiming his Fourteenth Amendment due process right to counsel was violated in the earlier adjudication hearing. Dalton argued that as a result, "the adjudication order and all dispositional orders issued under the jurisdiction acquired by the adjudication order must be vacated."

Dalton first claimed that the juvenile court failed to adequately advise him of his right to counsel. Dalton conceded that the court had engaged in the standard dialogue required by statute, but claimed the court must also inform a party of the "dangers and disadvantages of self-representation." A juvenile's right to counsel in delinquency proceedings was established in *In re Gault*, 387 U.S. 1 (1967). However, the concept that a court should advise parties of the dangers and disadvantages of self-representation is derived from *Faretta v. California*, 422 U.S. 806 (1975). *Faretta* held that that an adult criminal defendant should be made aware of the dangers and disadvantages of self-representation before waiving his right to counsel, "so that the record will establish that he knows what he is doing and his choice is made with eyes open." However, this Court also noted that the U.S. Supreme Court has not "prescribed any formula or script to be read to a defendant." *Iowa v. Tovar*, 541 U.S. 77 (2004).

The Supreme Court of Nebraska refused to adopt the *Faretta* standard for juvenile proceedings. The Court noted that in the context of adult criminal prosecutions, Nebraska has found "that a specific warning of the dangers and disadvantages of self-representation is not strictly required. A voluntary, knowing, and intelligent waiver of counsel can be found in the absence of a warning if the record viewed as a whole shows such a waiver." In other words, if the overall record demonstrates that the defendant understood the risks of self-representation, formal warnings from the court are not required. The Court further emphasized that adult prosecutions are often complex proceedings which makes self-representation difficult and dangerous. In contrast,

juvenile proceedings are generally simple matters, which do not involve complicated charges, technical rules of evidence, or examination of witnesses. Therefore, the Court found the juvenile court's advisement sufficient.

The Court next addressed Dalton's claim that the juvenile court erred in concluding he understood his right to counsel and knowingly, voluntarily and intelligently waived that right. Nebraska, like most other jurisdictions, considers the totality of the circumstances when determining whether a juvenile has knowingly, voluntarily, and intelligently waived the right to counsel. Relevant circumstances include "the age, intelligence, and education of the juvenile; the juvenile's background and experience generally, and more specifically, in the court system; the presence of the juvenile's parents; the language used by the court in describing the juvenile's rights; the juvenile's conduct; the juvenile's emotional stability; and the intricacy of the offense."

Here, the court noted that Dalton was only 9 years old, mentally handicapped, and had no previous experience with the legal system. However, the Court was persuaded by the fact that Dalton's mother was present and actively involved in the waiver. Considering these circumstances and the fact that Dalton was represented by counsel later in the proceedings, the Court found the juvenile court did not abuse its discretion in determining that Dalton understood his rights.

The Nebraska Supreme Court found no violation of Dalton's Fourteenth Amendment rights, and affirmed the juvenile court's judgment.

Mandatory Reporting / Standard of Care

Minnesota Supreme Court Holds That Although The Minnesota Child Abuse Reporting Act Does Not Create A Cause of Action For Failure To Report, It May Be Used As Evidence Regarding The Expected Standard Of Care For Mandatory Reporters. *Becker v. Mayo Foundation*, 2007 Minn. LEXIS 455.

Nykkole was born on July 26, 1997. When she was 22 days old, her parents brought her to the emergency room with a spiral fracture to her arm. After

questioning the parents, hospital physicians concluded the injury was not caused by abuse and released Nykkole to her parents. On September 11, 1997, Nykkole was taken to the emergency room by her mother who stated that Nykkole had vomited at least 10 times that day and was "sleeping a lot." Doctors determined that Nykkole had a "stomach bug," and sent her home. On September 15, Nykkole's mother again brought her to the emergency room, where testing revealed multiple skull and rib fractures and fractures to both legs. Doctors noted that the level of healing in the rib fractures demonstrated these injuries occurred prior to the hospital visit on September 11. Nykkole was also bleeding in the brain and suffering from brain injury. The state took custody of Nykkole and placed her in foster care with Nancy and Michael Becker. The parental rights of both biological parents were subsequently terminated, and the Beckers adopted Nykkole. Nykkole is now 10 years old, but will never function above the level of an infant.

In 2001, the Beckers sued the hospital, alleging that the negligence of hospital doctors caused Nykkole's injuries. The Beckers alleged several incidents of negligence including the hospital's failure, as a mandatory reporter, to report suspected child abuse. They claimed that "a physician's standard of care includes diagnosing and reporting abuse to outside authorities, and this standard in turn creates a common law duty on the part of the physician to report the suspected abuse to the proper authorities."

The district court held that although the Minnesota Child Abuse Reporting Act (CARA) creates a duty to report suspected child abuse, it does not create a civil cause of action for failure to report. The court also excluded all evidence related to the hospital's reporting of child abuse to outside authorities. At trial, the jury found that the hospital was negligent, but that the negligence was not a direct cause of Nykkole's injuries. After a motion for a new trial was denied, the Beckers sought appellate review. The appeals court affirmed.

The Minnesota Supreme Court granted review on three issues: (1) whether CARA creates a private cause of action

for failure to report suspected child abuse; (2) whether a hospital that accepts responsibility for treating a child owes that child a special duty to protect her from future harm; and (3) whether there is a common law cause of action for failure to report suspected child abuse in Minnesota.

The Court began by reviewing CARA. Under the statute, failure to report known or suspected child abuse is a misdemeanor. The Court found that the plain language of the statute demonstrated that the legislature intended to impose criminal, not civil, liability for failure to report. The Court also discussed its recent decision in *Radke v. County of Freeborn*, 694 N.W. 2d 788 (2005), which held that, “a cause of action exists for negligence in the investigation of child abuse and neglect reports as required under CARA.” The Beckers argued that this decision supported their claim that a cause of action also existed under CARA for failure to report suspected child abuse. The Court rejected this argument, holding that while *Radke* remedied the inconsistency between imposing criminal penalties on mandatory reporters and no sanctions on investigators, “there is no manifest incongruity in imposing criminal, but not civil liability on mandatory reporters.” The Court thus refused to recognize a private cause of action under CARA for failing to report.

The Court next addressed whether the hospital had a “special relationship” with Nykkole and therefore, a duty to protect her. The hospital argued that because Nykkole was injured while in the custody of her parents and not at the hospital, no special relationship was formed. The Court stated, “the factors we have consistently examined when confronted with a special relationship claim are the vulnerability and dependency of the individual, the power exerted by the defendant, and the degree to which the defendant has deprived the plaintiff of her ordinary means of protection.” In this case, Nykkole was vulnerable and dependant

on the hospital physicians to discover and prevent future abuse. However, she could not claim to have been deprived of “ordinary means of protection,” as none existed. In addition, the Court held that the hospital never intended to accept complete authority or custody over Nykkole. The Court also noted that in other cases recognizing a special relationship, the defendant had some control over the harm-causing agent. Here, the hospital had no control over Nykkole’s parents. Therefore, the Court concluded that no special relationship existed between the hospital and Nykkole.

Finally, the Beckers argued that the district court erred in excluding evidence that hospital physicians deviated from the expected standard of care by failing to report suspected child abuse. In a claim for negligent care and treatment, a plaintiff must generally show: “(1) the standard of care in the medical community applicable to the particular defendant’s conduct; (2) that the defendant departed from the standard of care; (3) that the departure from the standard of care directly caused the plaintiff’s injury.” At the district court level the Beckers sought to offer testimony from several expert witnesses that the hospital physicians in this case breached the standard of care. The Court concluded that it was an error to exclude this testimony. In addition, the Court held that “CARA’s reporting requirement is admissible as evidence that a physician of ordinary skill who suspects that a patient is the victim of child abuse will report the suspected abuse to outside authorities.” The Court held that the exclusion of this evidence required grant of a new trial because it might have reasonably changed the outcome.

The NACC joined the Children’s Law Center of Minnesota as amici curiae in this case arguing that the court should impose civil liability for failure to report under CARA and that medical professionals have a common law duty to report child abuse. The

NACC would like to thank John Jerabek of Niemi, Barr & Jerabek, Minneapolis Minnesota for his work on behalf of the NACC.

NACC Amicus Curiae Update

A.F. Al Odah et al. v. United States of America, et al., U.S. Supreme Court

The NACC participated as *amicus curiae* in a brief submitted by Juvenile Law Center (Philadelphia) in this case before the U.S. Supreme Court. The NACC was one of eight *amici*. The *amicus* brief argued that there is no basis for imposing military court jurisdiction over a child soldier. Given that federal law routinely accounts for the distinctive status of juveniles, and a growing body of developmental research confirms the existence of legally relevant distinctions between adults and juveniles, it would be illogical to find that Congress intended for the Military Commissions Act to create jurisdiction over juveniles such as Khadr in spite of Congress’ statutory silence.

The case involves Omar Khadr, a Canadian national, who was seized in Afghanistan in July 2002 when he was 15 years old. He was subsequently transferred to Guantanamo Bay Naval Base where he has been detained for the past five years. Throughout his detention, Khadr has been subject to interrogation and torture in the form of physical and psychological abuse. His juvenile status has not been taken into account in his treatment or in the conditions of his confinement at Guantanamo. Khadr remains indefinitely in the legal limbo of the military justice process. He is the only child soldier ever to be accused of a war crime in the United States.

The *amicus curiae* brief is available on the NACC website at: www.naccchildlaw.org/training/documents/FinalBrief.pdf. ■

GUARDIAN CASES — NOTICE TO READERS

Decisions reported in *The Guardian* may not be final. Case history should always be checked before relying on a case.

Cases and other material reported are intended for educational purposes and should not be considered legal advice.

Cases reported in *The Guardian* are identified by NACC staff and our members. We encourage all readers to submit cases.

If you are unable to obtain the full text of a case, please contact the NACC and we will be happy to furnish NACC members with a copy at no charge.

The Child Welfare Law Specialist



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

Welcome to The Child Welfare Law Specialist, a new feature in The Guardian. By now most of you have heard about the NACC Attorney Specialty Certification Program. But we know from the calls and emails that we get from you that it can be difficult to understand exactly what the program is and how it works. So in this first edition of our new column, we try to answer some of the more frequently asked questions.

Q: What exactly is certification?

A: Board specialty certification is a process used to identify and designate professionals in areas such as medicine and law as specialists in a particular practice area. Modeled after Medical Board Certification, Attorney Certification brands attorneys as specialists, thereby identifying them to clients, peers, and court systems as proficient practitioners. Board Certification elevates the quality of the practice of law by encouraging attorneys to be among the best in their communities. Certification is part of the NACC's commitment to improve the practice of law for children as a component of Court Improvement.

Q: Where are you accepting certification applications now?

A: The NACC is accepting applications in the states of California, Michigan, New Mexico, and Tennessee.

Q: I'm not in one of those states. When is certification coming to my state?

A: The NACC plans to bring certification to all 50 states and Washington

D.C. by December 2009. Look for the NACC Certification Program State Status chart on the NACC website, beginning in October 2007. This chart will show target opening dates for each jurisdiction and will be updated quarterly based on actual activity.

Q: What can I do to help bring certification to my state?

A: You can contact the NACC and let us know that you are interested in helping. Based on what has already been done in your state, we will make specific recommendations on what you can do. One of the first things we do in each state is form an NACC Certification Advisory Board.

Q: What is an NACC Certification Advisory Board?

A: This Advisory Board is a group of individuals representing geographical diversity within a state, and includes representatives from the key areas of child welfare law: child's attorneys, respondent parent counsel, agency attorneys and members of the judiciary. Additionally, an Advisory Board should include a Court Improvement Project coordinator, a member of the state bar association child law section, a representative from the administrative office of the court, as well as other "key players" in the field of child welfare law. The purpose of the Advisory Board is to provide the NACC with state-specific customs and practice, and to act as ambassadors for Child Welfare Law Certification with other members of the child welfare law community.

If you are interested in being on your state Advisory Board or know someone who should be on your

state's Advisory Board, please contact the NACC.

Q: How does the NACC decide which states to focus on first?

A: In expanding the certification program, the NACC wants to reach as many attorneys as quickly as practical, in the most efficient way. This means that a number of factors are considered in scheduling which states to focus on first.

When prioritizing states, the NACC looks for:

- A critical mass of interested child welfare attorneys
- A culture of improving practice
- Support from the Bench
- The specialty certification regulations in a state — whether a state is "certification friendly"
- The availability of funding to pay for or supplement attorney application fees

Q: What makes a state "certification friendly"?

A: Specialty certification is regulated by a state's Rules of Professional Conduct that address advertising. This is usually Rules 7.1 – 7.4. Model Rule 7.4 generally allows an attorney to call him/herself a specialist, so long as the certification comes from an accredited organization. Some states are "certification friendly", meaning that the states have well-developed state programs or readily welcome programs accredited by the ABA – like the NACC. Other states have been reluctant to embrace specialty certification for a variety of reasons. The NACC is generally focusing first on states that are certi-

fication friendly because less time and fewer resources are necessary to open our program in those states.

Q: NACC is accepting applications in my state — how do I know if I am qualified to apply?

A: You can review a Sample Application and the NACC Attorney Certification Standards online. This will help you understand the process and requirements you must meet. Briefly, in order to be certified, attorneys must meet the following standards:

- Good Standing: This is for the state of your principal practice – which is the state that is accepting applications.
- Substantial Involvement: You must have been practicing law for the last 3 years and at least 30% of your time must have been involved in child welfare law.
- Educational Experience: In the 3 years before you apply, you must have attended or taught a specific number of hours of continuing

legal education sessions (36 hrs. in most states).

- Peer Review
- Writing Sample: You need to submit a trial court memorandum, appellate brief, article or other writing sample demonstrating legal analysis in the field of child welfare law that you have written in the last 3 years.

If the Certification Committee finds that you have met all of those requirements, you must take and pass a written competency exam.

Q: How do I get an application?

A: Download the online Program Summary Brochure from the NACC website and send us your request for a certification application.

Q: How much does certification cost?

A: The cost of certification is typically \$600 (\$300 application fee and \$300 exam fee) plus annual dues of \$100. The fee includes your copy of Child Welfare Law and Practice: Representing Children, Parents, and Agencies in Abuse, Neglect,

and Dependency Cases (The Red Book). Agencies and staff offices may arrange for certification as a group at reduced rates. Groups may be eligible to access office, state, and federal funds including court improvement funds to pay for or subsidize certification fees.

Q: How do I prepare for the exam?

A: Your legal education, practice experience, and continuing legal education in child welfare, delinquency, family law, and related areas all help prepare you for the certification exam. You should also review The Red Book - everything you need to know for the exam is there. Additionally, the NACC now conducts a one-day Child Welfare Law Survey Course and Exam Preparation (The Red Book Training) at our national conference each year. The next scheduled training is August 3, 2008 in Savannah, Georgia. The course may be available as part of group certification packages as well. ■

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

Send an email to:
advocate@NACCchildlaw.org



Federal Policy Update

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

Congress is now working hard to move forward a number of large bills that could have a significant impact on children around the country, including court-affected children. These bills include FY08 appropriations bills (see below), the House-passed and Senate-passed Head Start Reauthorization bills (see below), the House-passed and Senate-passed bills to reauthorize the State Children's Health Insurance Program (SCHIP – H.R. 3162 and S. 1893), and the soon-to-be-unveiled House and Senate bills to reauthorize the No Child Left Behind elementary and secondary education law.

Federal Budget/ Appropriations for FY 2008

On February 5, 2007, President Bush submitted his proposed FY 2008 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). There was one modest increase (\$10 million) proposed for the Child Abuse Prevention and Treatment Act discretionary grants funding, to support new funding for nurse home visitation, shown by research to be effective at cutting child abuse and neglect among at risk families, and reducing later crime. The House FY08 Appropriations bill for Labor/Health and Human Services/Education was passed on July 19, 2007, and it rejected the proposed cut in SSBG, but included the \$10 million increase

in CAPTA discretionary grants. For most other child welfare programs, the bill largely kept FY08 funding at the FY07 levels (e.g., Promoting Safe and Stable Families, Independent Living Vouchers, etc.). Head Start and Child Care funding got a modest \$75 million increase for each, and 21st Century Community Learning Centers (after-school) got a \$125 million increase. The Senate FY08 Appropriations bill for Labor/Health and Human Services/Education was approved by the Appropriations Committee on June 27, 2007, but has not yet gone to the Senate floor for consideration. The Senate bill also included the proposed additional CAPTA funding, but keeps most other child welfare programs at FY07 levels. The Senate bill includes a \$200 million increase in Head Start funding, but includes no child care increase and only a \$19 million increase in 21st Century Community Learning Centers (after-school) programs.

Once again, this year, the Administration proposed large cuts in the area of juvenile justice and delinquency prevention, though there was a new twist this year: the proposed 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, along with a 25% cut from last year’s juvenile justice funding levels. The House passed its FY08 Commerce, Justice, Science Appropriations bill on 7/26/07, and the Senate Appropriations Committee adopted its FY08 bill on June 28, 2007. Neither bill incorporated the Administration’s proposed block grant. The Senate bill includes overall funding that is similar to FY07 levels (redistributed amongst the programs slightly), and the House bill includes a funding increase of nearly \$60 million

for Juvenile Justice and Delinquency Prevention overall. No Senate floor action for either appropriations bill has been scheduled yet.

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 to 48 on May 2nd. The House- and Senate-passed legislation includes a variety of program improvements, including some language to improve Head Start access for foster children. Thankfully, the bill does not include state block grants with inadequate quality standards, which had been in a previous House-passed bill (that bill was never enacted). No schedule for House/Senate conference to address the modest differences between the House- and Senate-passed Head Start reauthorization bills.

Offender Reentry Legislation

On March 28, 2007, the House Judiciary Committee marked up the bi-partisan Second Chance Act of 2007, H.R. 1593. The bill is expected to be considered on the floor of the House of Representatives in the near future. S. 1060, the bi-partisan Senate version of the Second Chance Act of 2007, was approved by the Senate Judiciary Committee on 8/2/07. Senate floor consideration should occur soon.

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 no longer has the previously-included section providing for expanded prosecution of juveniles as adults in federal court. Companion legislation in the House, H.R. 1582, was introduced on 3/20/07 by Rep. Schiff et al. No House Judiciary Committee markup of the Schiff bill is scheduled at this time, nor has Senate floor consideration of the legislation occurred.

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.

Indian Child Protection and Family Violence Prevention

On 1/25/07, S. 398, a bill to amend the Indian Child Protection and Family Violence Prevention Act, was intro-

duced. Among other things, this legislation requires that reports on tribal-related child abuse allegations include information on any federal, state or tribal final conviction, and that these reports be transmitted to and kept by the FBI. The full Senate passed this bill on May 25, 2007. No House action has occurred yet.

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



2008 Outstanding Legal Advocacy Award NOMINATION APPLICATION

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

The Nomination Letter should highlight:

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

Nominations Must Include:

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

Nominations May Also Include:

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

NOMINEE:

NAME _____
 DEGREE _____
 TITLE / POSITION _____
 FIRM / ORGANIZATION _____
 ADDRESS _____
 CITY / STATE / ZIP _____
 PHONE _____ FAX _____
 E-MAIL _____
 NUMBER OF YEARS INVOLVED IN CHILD ADVOCACY _____

NOMINATOR:

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

Nominations Must Be Received By June 1st, 2008.

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

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.

- On 2/16/07, Sen. Clinton and Sen. Snowe introduced the Kinship Care-giver Support Act (S. 661), which provides funding for kinship navigator programs, provides a IV-E support option for kinship care, and provides notice to relatives of children entering foster care. No Finance Committee action has yet been scheduled. On 5/7/07, Rep. Danny Davis introduced H.R. 2188, the House version of the legislation, but no further action has occurred.
- On 2/16/07, Sen. Bond and Sen. Clinton introduced S. 667, the Education Begins at Home Act, which would authorize \$500 million in new federal funding for early childhood

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

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



Children's Law News

News

NACC Call for Abstracts. The NACC is soliciting abstracts for presentations at its 31st National Juvenile and Family Law Conference, August 3–6, 2008 in Savannah, Georgia. For more information please visit: www.naccchildlaw.org/training/conference.html. Submissions must be received by February 1, 2008.

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

NACC 2008 Law Student Essay Competition. The NACC is accepting essays for the 2008 Law Student Essay Competition. The winning essay will

be published in the 2008 Children's Law Manual, and the winner will be given \$1,000, a one-year NACC membership, and a scholarship to the 2008 conference in Savannah, GA. Essays will be evaluated on the importance of the topic to advancing the legal interests of children, persuasiveness, and quality of research and writing. Essays should be submitted electronically to: advocate@NACCchildlaw.org by June 1, 2008.

NACC Child Welfare Law Attorney 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 visit: www.naccchildlaw.org/training/certification.html.

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.

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

Foster Youth Scholarship. The Michigan Foster Education Resource Network (MI-FERN) is offering three scholarships to foster youth who are currently enrolled in a post-secondary education program. For more information and to apply, please visit: www.mi-fern.org.

Conferences & Training

The NACC's premier training each year is the National Juvenile and Family Law Conference. The 2007 Juvenile and Family Law Conference was held in Keystone, Colorado in August with over 600 NACC members in attendance, a record number. The 2007 Children's Law Manual from the conference is available for purchase in the publications order form in this issue. NACC members are encouraged to make plans to attend the 2008 national conference in Savannah, Georgia, August 3–6, 2008.

**December 12–14, 2007
Beyond the Bench XVIII, Judicial**

Council of California, Center for Children, Families, and the Courts, San Diego, CA. www.courtinfo.ca.gov/programs/cfcc/resources/calendar/

February 25–27, 2008

Children 2008, CWLA National Conference, Washington, D.C. For more information visit: www.clwa.org.

May 19–23, 2008

NACC 13th 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 2008. For more information, please visit www.naccchildlaw.org/training/RMCATI.html.

August 3–6, 2008

NACC 31st National Juvenile and Family Law Conference, Savannah, GA. For more information, contact the NACC or visit: www.NACCchildlaw.org/training/conference.html. Conference Brochures will be available in Spring, 2008.

Publications

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

Katner, David R., *The Ethical Struggle of Usurping Juvenile Client Autonomy by Raising Competency in Delinquency and Criminal Cases*, 16 S. Cal. Interdisc. L.J. 293 (2007).

Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions, International Third Edition, 2007, by Jean Koh Peters. Available from LexisNexis at: <http://bookstore.lexis.com/bookstore/catalog>.

Fox, Adair and Jill Duerr Berrick, *A Response to No One Ever Asked Us: A Review of Children's Experiences in Out of Home Care*, Child and Adolescent Social Work Journal, Vol. 24, No. 1 (February 2007) pp. 23-51.

Families in Need of Critical Assistance: Legislation and Policy Aiding Youth Who Engage in Noncriminal Misbehavior. This 2007 release from the ABA Center on Children and the Law examines new approaches for helping juvenile status offenders (i.e., youth who run away, are "ungovernable" or truant) and their families. It is available online at: www.abanet.org/abastore or by calling (800) 285-2221.

NACC Child Welfare Law Office Guidebook: Best Practice Guidelines for Organizational Legal Representation of Children in Abuse, Neglect, and Dependency Cases (The Blue Book). Created as part of the NACC Children's Law Office Project (CLOP), the Blue Book is a collection of 33 best practice guidelines intended to move child welfare law offices toward model practice. It is organized by three areas of operation: administration, development, and program. Within these categories are guidelines and commentary developed by the CLOP staff and advisory board to promote best practices in the delivery of legal services to children. Limited numbers of hard copies are available for \$20 each by contacting the NACC. The searchable electronic version is available at no charge at: www.naccchildlaw.org/about/nclop.html.

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

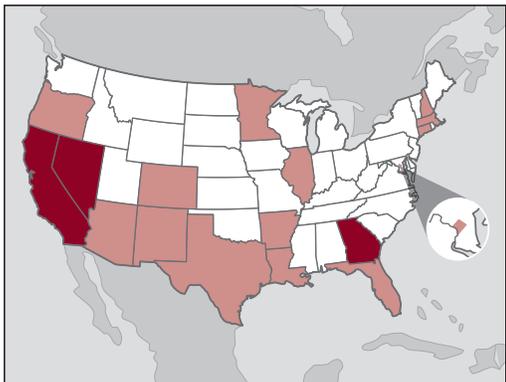
Assistant Staff Director, ABA Center on Children & the Law, Washington, D.C. The ABA Center

on Children and the Law is seeking a staff attorney to provide full-time substantive legal expertise for projects focused on child and adolescent health, juvenile status offenses, father involvement in child welfare cases, and the administration of justice in cases involving children and youth. For more information, please visit: www.abanet.org/hr (find position C960). Apply online or send cover letter and resume to abajobsdc@abanet.org (include position C960 in the subject line); mail to American Bar Association, HR-C690, 740 15th St. NW, Washington, DC 20005; or fax to (202) 662-1998.

Assistant Staff Director / Staff Attorney, ABA Center on Children & the Law, Washington, D.C. The position provides full-time substantive child welfare legal work for the Barriers to Permanency Project/Pennsylvania and other grants of the ABA Center on Children and the Law. Designs, organizes, coordinates and presents at state child welfare law trainings. Facilitates permanency delays projects by running advisory board meetings, developing written protocols and materials, and providing on-site training in project counties. Provides technical assistance to county departments of social services and attorneys on key issues in law. Writes and publishes manuals and legal articles on child welfare law issues. Position requires extensive travel. Applicant must have: J.D. and a minimum of seven to eight years of legal experience as an attorney in child welfare law, excellent writing skills, and expertise in public speaking and training. For more information, please visit www.abanet.org/hr (find position C1003). Apply online or send cover letter and resume to abajobsdc@abanet.org (include position C1003 in the subject line); mail to American Bar Association, HR-C690, 740 15th St. NW, Washington, DC 20005; or fax to (202) 662-1998. ■

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)

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

Northern California (NCACC)

The NACC is indebted to NCACC for its generous support of the 2007 National Conference in Keystone, Colorado. For more information on NCACC activities, contact Jan Sherwood in the Bay Area at jsherwood@mac.com, or Robert Wilson in Sacramento at rwilson@sacchildadv.com.

Nevada (NAAC)

Congratulations to the Nevada Association of Advocates for Children on its approval as an officially chartered NACC Affiliate! To become involved in NAAC activities, please contact Stephanie Charter in Las Vegas at Clark County Legal Services: 702-386-1070; scharter@clarkcountylegal.com. ■

Save the Date

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FOR CONFERENCE INFORMATION:
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FOR SAVANNAH INFORMATION:
www.savannahvisit.com
www.savannah.hyatt.com

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- 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.

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