The Guardian

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Thank You

The Guardian is Green! In consideration of the environment, The Guardian is now available exclusively in PDF format. Please see page 20 for more information.
The Mission of the NACC is to:

Strengthen the Delivery of Legal Services for Children

Enhance the Quality of Legal Services Affecting Children

Improve Courts and Agencies Serving Children

Advance the Rights and Interests of Children

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October 20–23 • Austin, Texas

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The Conference

This conference is the NACC’s premier training, and is the product of 33 years of experience. It is designed primarily for attorneys who practice child welfare, juvenile, and family law. NACC members and attendees dedicate most of their practice to the representation of children and youth, parents, or the state in juvenile dependency, delinquency, or family law cases. Due to the multidisciplinary nature of this work, professionals from the fields of medicine, mental health, social work, probation, law enforcement, and education also belong to the NACC, attend our conferences, and serve as faculty. The conference is comprised of Plenary Sessions and Breakout Sessions. Attendees are free to sign up for and attend any 1 of the 5 sessions offered during the Breakout Sessions.

The Hotel

The NACC 33rd National Conference will be held October 20–23, 2010 at the Hilton Austin, 500 East 4th Street, Austin, Texas, 78701, Tel: 512-482-8000.

For room reservations, visit: www.austin.hilton.com, enter your check-in and out dates. On the next page, in the box titled “Group/Convention Code,” enter CCL.

Room Rate: Single $159 / Double $179

Cutoff Date: To receive the discounted room rate, reservations must be made by Sep 30, 2010.

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The 33rd National Child Welfare, Juvenile, and Family Law Conference:

Wednesday, October 20 thru Saturday, October 23, 2010

Achieving Equity for Children and Families

Conference Sponsors

Co-Sponsors
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American Bar Association Center on Children and the Law
American Bar Association Section of Litigation
Children’s Rights Litigation Committee
American Bar Association Section on Family Law
Attorney Protective
Colorado Juvenile Defender Coalition
Colorado Office of the Child’s Representative
Family Law Section of the State Bar of Texas
International Society for Prevention of Child Abuse and Neglect
Juvenile Law Section of the State Bar of Texas
National Council of Juvenile and Family Court Judges
National Institute for Trial Advocacy
Practising Law Institute
Supreme Court of Texas, Permanent Judicial Commission for Children, Youth, and Families
Texas CASA
Texas Lawyers For Children

Sponsorship & Exhibits: For more information or to become a sponsor or exhibitor, please contact the NACC at: advocate@NACCChildlaw.org.

Continuing Education Credits

NACC conferences are typically approved by the continuing education agencies in most jurisdictions and disciplines. Uniform certificates of attendance will be distributed at the conference for use in your jurisdiction.

Pre-Conference Programs Have Been Pre-Approved as Follows:

Trial Skills Training
- Colorado: General: 10
- California: General: 7
- Texas: General: 8

Red Book Training
- Colorado: General: 7, Ethics: 1.2
- California: General: 4.5, Ethics: 1
- Texas: General: 5.5

The 3-Day Conference Has Been Pre-Approved as Follows:

Colorado: General: 23, Ethics: 1.8
California: General: 17, Ethics: 1.5
Texas: General: 14, Ethics: 1.5

Pre-Conference

Wednesday, October 20, 2010

8:30AM - 4:30PM: Trial Skills Training
Through lecture, demonstration, and participatory workshops, participants will gain practical trial advocacy skills. Training will cover critical areas of trial practice including: Case Analysis; Direct & Cross Examination; Objections; Evidentiary Foundations and Exhibits; Refreshing Recollection / Impeachment; Opening & Closing Arguments; and the creation of a Trial Notebook. Hone your trial skills and gain new strategies.

Pre-Register and Fee: $200. Box lunch included. Approved for CLE.

Note: Not affiliated with the National Institute for Trial Advocacy.

9:00AM - 4:00PM: NACC Red Book Training

Wednesday, October 20 thru Saturday, October 23, 2010

Program

Wednesday, October 20, 2010

3:00-7:00PM
Registration Opens / Exhibits Open

Thursday, October 21, 2010

7:30AM
Conference Registration Opens

8:00-8:30AM
Continental-Networking Breakfast

8:30–10:00AM
Keynote Address: Achieving Equity for Children and Families, presented by James Bell, JD

Mr. Bell is the Founder and Executive Director of the W. Haywood Burns Institute (BI). Mr. Bell and his colleagues at the BI are working with systems and community stakeholders to reduce the disproportional youth of color in the juvenile justice system in over 40 jurisdictions throughout the country.

10:00–10:30AM
Coffee Break

10:30AM–12:00PM
Breakout Session A

2. Trauma Informed Legal Systems: A New Paradigm for Understanding and Reaching Children’s Troubling Behavior
3. Calm in the Face of the Storm: Strategies on How to Effectively Represent Children in High Conflict Custody and Visitation Cases
4. How Direct Service Attorneys Can Advocate for Systemic Change — Even in a Time of Fiscal Crisis
5. Navigating the Child Welfare System: The Advocacy Road Map

12:00–1:45PM
CLOP Networking Lunch: Lawyer and Social Worker Collaboration in Children’s Law Offices

The Children’s Law Office Project (CLOP) is designed to promote the development and operation of model law offices dedicated to legal services for abused and neglected children and youth. This year’s lunch will feature a presentation on Lawyer and Social Worker Collaboration in Children’s Law Offices and offer networking opportunities for attorneys who work in children’s law offices. Separate registration and fee: $30.

OR Lunch on Your Own
THURSDAY – CONTINUED

1:45–3:15PM

Breakout Session B

1. Impact of Trauma on Children in the Child Welfare System (Part 1 of 2)
2. Who Gets a Second Chance? An Evaluation of Blended Sentencing in Ohio and Vermont
3. Immigrants in Juvenile and Family Courtrooms: Equity and Overcoming Legal Barriers and Inequities
4. Advocate! Empower! Hear My Voice!
5. Using Data to Advocate for Permanency and Policy Changes

3:15–3:45PM

Catered Break

3:45–5:15PM

Plenary Session 1: The Impact of Trauma on Brain Development: A Focus on Court-Involved Children, presented by Dr. Bruce Perry, MD, Ph.D.

Dr. Perry is an internationally-recognized authority on children in crisis. Dr. Perry is the Provincial Medical Director in Children's Mental Health for the Alberta Mental Health Board. In addition, he is the Senior Fellow of the ChildTrauma Academy (www.ChildTrauma.org), a Houston-based organization dedicated to research and education on child maltreatment. Dr. Perry has been consulted on many high-profile incidents involving traumatized children, including the Columbine, Colorado school shootings, the Oklahoma City bombing, and the Branch Davidian siege.

Book Signing by Dr. Perry: Born for Love: Why Empathy Is Essential — and Endangered (2010). Dr. Bruce D. Perry and journalist Maia Szalavitz argue that empathy, the ability to recognize and share the feelings of others, is a crucial human quality that underlies much more than love, friendship and parenting. Through compelling personal stories and wide-ranging research, they explore how empathy affects everything from emotional depression to the Great Recession, from physical health to mental health, from our ability to love to criminal behavior and even the rise and fall of societies.

5:15–6:30PM

Reception: Join your colleagues for a Texas-style welcome with appetizers, drinks, and entertainment!
FRIDAY, OCTOBER 22, 2010

Continental Breakfast / Presentation by Texas Lawyers for Children

Plenary Session 2: Parent Partners

Coffee Break

Breakout Session C

1. Increasing Access to Trauma Informed Services for Children (Part 2 of 2)
2. Defending and Advocating for Children in Adult Criminal Court
4. The Courts Catalyzing Change
   Benchcard Study: Design and Data
5. Mental Health
   Advocacy: A Team Approach

Annual Luncheon

Changing a System of Disproportionality and Disparate Outcomes: Perspective from One Child Welfare Leader’s Personal Journey from Caseworker to Deputy Commissioner, presented by Joyce James, LMSW-AP. Ms. James is the Deputy Commissioner, Texas Department of Family and Protective Services.

Awards Presentation

Introduction of 2010 Certified Child Welfare Law Specialists

Breakout Session D

1. A Review of the Medical and Legal Literature on Abusive Head Trauma: Trial Advocacy Implications
2. Crossover Youth: Foster Youth Incarcerated in the Texas Youth Commission
3. Parent’s Attorney Role in Improving Reunification Outcomes
4. Seeking Equity in Rural Representation: A Judicial Perspective
5. School Stability for Children in Foster Care

Catered Break

Breakout Session E

1. Can I Represent This Child? Ethical Conflicts Analysis for Children’s Attorneys
   * Ethics CLE Credit
2. The Juvenile’s Right to be Cross-Examined in a Developmentally Appropriate Fashion: The Role of Defense Counsel and the Court
3. Advocating for Incarcerated Parents and their Children
4. Collaborating to Achieve Better Outcomes: Building a Successful Multidisciplinary Foster Care Commission
5. Legalization Remedies for Undocumented Children

6:00PM

Off-Site Activity

Join your colleagues for a walking tour of downtown Austin, followed by dinner & entertainment at Esther’s Follies. Described as part magic show, part vaudeville review, part satire tour-de-force, Esther’s Follies offers biting, hilarious satire on all the news makers and events fit to parody (www.esthersfollies.com/). Separate registration and fee: $50.
### SATURDAY, OCTOBER 23, 2010

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<th>Session</th>
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<tr>
<td>8:00–8:30AM</td>
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| 8:30–9:45AM | Breakout Session F:  
  1. Youth Participation in Proceedings  
  2. Day Care and Delinquency  
  3. Child Protection Mediation & Advocacy  
  4. Aging Out of Foster Care — The Lawyer’s Role  
  5. Dependency Criminal Crossover: How to Protect Your Clients |
| 9:45–10:00AM | Coffee Break                                                          |
| 10:00–11:15AM | Breakout Session G:  
  1. Strategies for Maximizing the Positive Impact of Fostering Connections on Older Youth  
  2. Hidden Injustice: LGBTQ Youth in the Juvenile Justice System  
  3. Open Adoption Agreements: Settlement Tool or Best Interests?  
  4. School Discipline and Students in Foster Care  
  5. Setting up a Child Advocacy Office: Charting Your Course |
| 11:15–11:30AM | Catered Break                                                          |
| 11:30–1:00PM | Closing / Plenary Session 3: *Cross-Systems Advocacy for Youth*, presented by James Bell, JD, Robert Schwartz, JD, and Kent Berkley, JD |
| 1:00PM      | Adjourn                                                                 |
Registration

Register by mail, fax, phone, or online at: www.NACCchildlaw.org

NACC accepts the following methods of payment:

Purchase Order: Must accompany registration; must be paid within 45 days; and must be guaranteed with a credit card. If payment is not received within 45 days, the credit card will be charged.

Check: Make payable to NACC and mail to: 13123 E. 16th Ave., B390, Aurora, CO 80045

Credit Card: Submit form via mail, or fax to 303-864-5381. 303-864-5320 • 1-888-828-NACC

Tax ID# 84-0743810

Registration Discounts are Available!

- Current NACC members receive a $100 discount
- Register online at www.NACCchildlaw.org and save $10
- Child Welfare Law Specialists take 10% off applicable rate
- Groups of 5 or more: send inquiry to advocate@NACCchildlaw.org

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<td>No - Member ............... $ 485</td>
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Pre-Conference | Wed, Oct 20

NACC Red Book Training

☐ Yes, I will attend ($200, includes Red Book, Second Edition) $ ______

Trial Skills Training

☐ Yes, I will attend ($200, includes lunch) $ ______

Conference Registration (applicable fee from blue box above) $ ______

Networking Lunch | Thurs, Oct 21

☐ Yes, I will attend ($30) $ ______

Annual Luncheon | Fri, Oct 22

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

☐ I will bring guest(s) @ $30 per guest $ ______

Off-Site Activity | Fri Evening, Oct 22

☐ Yes, I will attend ($50, includes dinner and entertainment) $ ______

☐ I will bring guest(s) @ $50 per guest $ ______

Total Amount Enclosed or to be Charged $ ______

Please indicate your choices for Breakout Sessions A – G:

A: [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5

B: [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5

C: [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5

D: [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5

E: [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5

F: [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5

G: [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5

Please indicate your vegetarian meal requirement:

☐ Special Accommodations: If you require special accommodations, please contact the NACC as soon as possible.

Cancellations: Must be made in writing. If postmarked by Sep 30, 2010, you will receive a refund, minus a $100 processing fee. If postmarked after Sep 30, 2010, you will not receive a refund.

Please charge my [ ] VISA [ ] MASTERCARD [ ] DISCOVER

Card number: CVD (5-digit code from back of card)

Expiration date:

Name as shown on card:

Signature:

Billing ZIP CODE (Print entire billing address if different than above)
Adoption / Full Faith and Credit

Louisiana to Give Full Faith and Credit to New York Judgment Awarding Adoption of Louisiana-Born Infant to Same-Sex Couple. Adar v. Smith, 597 F.3d 697 (5th Cir. 2010).

Summary by NACC Legal Intern Anne Rosenbaum, JD Candidate, University at Buffalo School of Law.

Oren and Mickey, an unmarried same-sex couple from Connecticut, adopted Infant J through a New York state adoption agency. The adoption decree was granted in a New York state family court, pursuant to a state law authorizing joint adoptions by unmarried, same-sex couples.

Seeking an updated birth certificate for Infant J reflecting his new name and his relationship to his adoptive parents, Oren and Mickey arranged for a Report of Adoption to be forwarded to Infant J’s birth state of Louisiana. Upon receipt of the request, the Louisiana Department of Health and Hospitals contacted the state’s Attorney General to determine whether Louisiana must issue the requested certificate. The Attorney General responded that Louisiana does not owe full faith and credit to the New York adoption “because it is repugnant to Louisiana’s public policy of not allowing joint adoptions by unmarried persons.”

The Louisiana State Registrar informed the adoptive parents that Louisiana would not issue the certificate because (1) the state only allows in-state adoptions by single adults or married couples, (2) Louisiana law gives the Registrar full discretion for issuing amended birth certificates for out-of-state adoptions of Louisiana-born children, and (3) the Registrar may only issue amended certificates in accordance with the laws of Louisiana.

As a result, the adoptive parents filed suit against the Registrar in the Eastern District of Louisiana, arguing (1) New York state law requires Infant J be issued an amended certificate listing his adoptive parents and (2) Louisiana owes full faith and credit to the New York adoption. The district court granted summary judgment in favor of the adoptive parents, holding that Louisiana owes full faith and credit to the New York adoption decree and that there is no public policy exception to the clause. Consequently, the Registrar filed an appeal.

On appeal the case went before the U.S. Court of Appeals, Fifth Circuit. The court first considered whether the adoptive parents had experienced an “injury-in-fact” to establish standing in federal court. The adoptive parents argued that they suffered injuries including difficulty enrolling Infant J in Mickey’s health insurance, airline harassment when they were suspected of kidnapping Infant J, and lack of fulfillment because their names were not on Infant J’s Certificate. The court held Oren and Mickey’s injuries did satisfy the “injury-in-fact” requirement.

Next, the court considered whether the Registrar’s failure to issue a new Certificate violated the Full Faith and Credit Clause of the United States Constitution (art. IV, §1). The Clause “requires that out-of-state judgment be given the same effect in the several states as it would be given in the adjudicating state.” Mills v. Duryee, 11 U.S. 481, 485 (1813). Also, the Clause has no exceptions for the states’ differing public policies. Baker ex rel. Thomas v. General Motors Corp., 522 U.S. 222, 232 (1998). The court stated, “Louisiana’s ‘public policy’ is simply irrelevant and immaterial.” Furthermore, the court noted that adoption and domestic law decrees must be given full faith and credit along with other types of adjudications, as the parental rights and status of adoptive parents as adjudicated by one state court are not confined within that state’s borders and do not cease to exist at another’s borders.

Finally, the court analyzed Louisiana law to determine whether it mandates the Registrar to issue a certificate. According to Baker, if the statute’s plain language does require a certificate to be issued, the requirement must be applied in an “evenhanded” manner. 522 U.S. at 224. However, while the New York decree must be given full faith and credit, the rights afforded must come from Louisiana law, rather than New York law. Finstuen v. Crutcher, 496 F.3d 1139, 1154 (2007). The Fifth Circuit turned to Louisiana Supreme Court precedent which uses the plain meaning...
to interpret statutes unless that meaning would be “demonstrably at odds” with the intentions of the drafters.

The statute reads: “When a person born in Louisiana is adopted in a court of proper jurisdiction... the state registrar may create a new record of birth.” Also, the new record should show the “date and place of birth of the person adopted,” “the new name,” and “the names of the adoptive parents.” Need a citation to the statute that’s being quoted. La. Rev. Stat. Ann. §40:76.

The Registrar argued the presence of “may” gave her discretion in choosing to issue certificates. However, the Court held her discretion lay in determining if the decree’s certification is proper according the criteria of the statute; once it is determined to be proper (as Infant J’s is), the Registrar is mandated to issue a new, corrected birth certificate.

Also, the Registrar asserted that the meaning of “adoptive parents” should be considered alongside the rest of Louisiana’s substantive law which allows only heterosexuals to marry and allows only married couples to jointly adopt. Yet, “adoptive parents” is not defined in Louisiana law, and thus the plain meaning must be sought. Referring to common dictionary definitions, the Court held that the plain language meaning of “adoptive parents” to be “father or mother who adopts a child.” It therefore declared Oren and Mickey the adoptive parents of Infant J.

The Fifth Circuit upheld the district court’s motion for summary judgment in favor of Oren and Mickey, ordering the Registrar to issue Infant J a new birth certificate naming his adoptive parents.

Qualified Immunity / Discretionary Immunity for Public Officials

Fourth Circuit Holds Qualified and Discretionary Immunity Applies to Social Worker and Child Welfare Agency Where Sister Placed in Foster Care with Sexually Abusive Brother. Doe v South Carolina Dep’t of Soc Servs., 597 F.3d 163 (4th Cir. 2010).

Summary by NACC Legal Intern Ellen Pepper, JD Candidate, University of Colorado Law School.

Jane Doe and her brother were removed from their mother’s home in 1999 based on allegations of sexual abuse. The sexual abuse assessments were inconclusive; however, the South Carolina Family Court found that the children were physically neglected. The agency was granted temporary custody and the children were placed out of the home.

In foster care, Brother became angry and depressed. He blamed his sister for his inability to return to his mother’s care, stating he did not believe her sexual abuse allegations. During this time, the girl began displaying behaviors consistent with possible sexual abuse. The boy was hospitalized because of his anger and depression and upon discharge placed in a different foster home. The therapist reported that Brother posed a danger to his sister, but that he was able to cope with his emotions and be reunited with his sister. Therefore, the agency’s ultimate goal was to reunite the children.

In November of 2001, Jane was placed with a new foster family. In September of 2002, Brother was placed in Jane’s foster family. The agency filed an action to terminate the parental rights of the biological parents so that the siblings could be adopted together. The mother surrendered her parental rights, and the family court terminated the father’s parental rights.

The social worker informed the prospective adoptive parents that the agency had been unable to conclude if the children had been sexually abused, but that since the children were removed from their mother’s home there had been no reports of sexual abuse. After Jane and her brother were placed with the family for prospective adoption, the family decided to adopt Jane but not her brother because he displayed inappropriate behavior towards their son.

A year later, the brother admitted to sexually abusing his sister before they were removed from their mother’s care. Jane stated this abuse had continued until they had moved in with their adoptive family. The social worker stated she had no knowledge of any inappropriate sexual behavior between the siblings. After this disclosure, Jane’s behavior worsened. She became physically and sexually aggressive and violent.

The adoptive family filed a suit against the social worker under § 1983, alleging that she had violated Jane’s substantive due process right to reasonable safety and security under the Fourteenth Amendment when she placed her in foster care with her brother, knowing he sexually abused her. They further stated that by not fully disclosing the children’s background, the social worker violated their substantive due process rights. Lastly, they filed a separate suit alleging gross negligence by the agency’s employees regarding placement of the siblings. The claims against the social worker were dismissed on the basis of qualified immunity and the claims...
against the agency were dismissed based on discretionary immunity.

The Fourth Circuit Court of Appeals began by reviewing qualified immunity. The court stated a government official will be granted qualified immunity unless (1) the plaintiff’s constitutional right has been violated, and (2) “the right at issue was ‘clearly established’ at the time of [the] alleged misconduct.” Pearson v. Callahan, 129 S. Ct. 808, 815-816 (2009). The Supreme Court in DeShaney v. Winnebago held that when a state fails to protect an individual against private violence, this failure does not constitute a violation of the Fourteenth Amendment, stating the purpose of the Fourteenth Amendment is to “protect people from the State, not to ensure that the State protects them from each other.” 489 U.S. 189, 196 (1989). The DeShaney Court held that when the State involuntarily takes a person into custody, such as incarceration or institutionalization, then an affirmative duty to protect the person is created. The DeShaney Court did not decide whether the placement of children in foster care created a situation where there was an affirmative duty to protect.

The Fourth Circuit’s earlier jurisprudence had not definitively decided whether the State had an affirmative duty to protect children against private violence when they were placed in foster care. Here, the court held that when the State involuntarily removes a child from her home, the state has restrained the child’s liberty through an affirmative act, therefore the protections of the Fourteenth Amendment apply. Once the protections of the Fourteenth Amendment apply, a duty to not make a “deliberately indifferent” foster placement is created. A “deliberately indifferent” placement requires that the defendant knew of the danger and chose to ignore the danger.

The court found it unnecessary to determine if the social worker had been deliberately indifferent because it affirmed the lower court’s decision based on the second part of the qualified immunity test, stating that when the placement decisions were made, the substantive due process right to personal safety and security in foster care had not been clearly established either in the Supreme Court or the Fourth Circuit.

The court also affirmed the summary judgment of the claim that the adoptive parents’ substantive due process rights were violated, finding there was no Supreme Court decision stating prospective adoptive parents have a substantive due process right to “full disclosure” of a child’s history.

Lastly, the court vacated and remanded the grant of summary judgment for the claim of gross negligence by the agency, holding that when state officials are grossly negligent there may be an exception to the grant of discretionary immunity, according to § 15-78-60(25) of the South Carolina Tort Claims Act.

Family Law / Custody Agreements

SUMMARY BY NACC LEGAL INTERN DONALD ANDREW YOST, JD CANDIDATE, SUFFOLK UNIVERSITY LAW SCHOOL.

Donnie Edington received full custody of his two daughters after divorcing his wife, Elizabeth Gainey. During the next three years, the girls, ages 5 and 4, suffered health problems resulting from neglect, including an aggravated gait derangement, ear and staph infections and irreparable dental degradation. Additionally, Edington married and divorced twice, left his daughters in the care of an alleged drug dealer, participated in “spousal-swaps,” kept a large inventory of sex devices in his home, and posted lewd images on a MySpace account. Gainey grew concerned for her daughters’ well-being and filed a petition to modify the custody arrangement and grant her liberal visitation rights.

The chancery court dismissed Gainey’s action for failing to show that a material change in the custodial home had occurred. In its reasoning, the chancery court found no “proof of...a nexus” between Edington’s sexual exploits and the children’s deteriorating health. Neither was the chancery court was convinced the girls’ poor health constituted a substantial change warranting modification. After having determined no material change had occurred, the court ruled no GAL report was needed.

Gainey appealed the decision, alleging the chancery court erred by (1): failing to view the
totality of the circumstances when determining whether a material change had occurred in the custodial home that was adverse to the children’s welfare, and (2) not requiring a report from the guardian ad litem (GAL).

The appellate court first considered what factors to consider in evaluating whether a material change has occurred in the custodial home.

According to Mississippi case law, in order to modify a child custody decree a non-custodial parent must show (1) a material change of circumstances has occurred in the custodial home since the most recent custody agreement, (2) the change adversely affects the child, and (3) modification is in the best interest of the child. A “change in circumstances” is a change in the overall living conditions in which the child is found. Consequently, the totality of the circumstances must be considered in evaluating whether a material change has occurred.

Gainey first argued analysis of a material change requires evaluating the totality of the circumstances and that the chancery court improperly examined the girls’ deteriorating health and Edington’s behavior as separate and isolated incidents. The appellate court agreed, holding evidence of a material change in the custodial home should be viewed in light of the totality of circumstances. The court cautioned that simply because a child “appears to remain unscarred” by an environment that clearly has an adverse affect on her well-being does not mean she should be preclude from placement in a healthier environment.

Secondly, Gainey argued the chancery court erred by finding where there was no proof of an adverse affect on the children, no report from the GAL was needed. Under Mississippi law, a GAL has a duty to provide recommendations or a written report to the court, regardless of the chancellor’s ruling. If the chancellor rules contrary to the GAL’s recommendations, she is to state the reasons in her opinion.

Gainey argued not requiring a guardian ad litem report constituted a failure of the GAL’s duties and left the chancellor with no recommendations to consider in light of the neglect allegations. The appellate court held the GAL did not comply with her statutory duties to provide recommendations or a report. Likewise, even where a chancellor might rule contrary to the GAL’s recommendations, she must at the least state her reasons why and not simply rule that no report is needed. The court identified the GAL’s responsibility to zealously represent the child. A GAL cannot fulfill this responsibility, the court stated, when he or she defers to the chancellor’s discretion and offers no recommendations whatsoever.

Thus, the Mississippi Court of Appeals held when considering whether a material change has occurred in a custodial home the fact-finder should examine the totality of the circumstances. Additionally, the court should analyze both actual and reasonably foreseeable adverse affects to determine whether a material change has occurred. Lastly, the court clarified a GAL’s duty to submit either recommendations or a written report to the court for the chancellor’s consideration, regardless of whether the chancellor will adopt the recommendations. Fulfilling a GAL’s responsibility to zealously advocate for the child’s best interest requires more than deference to the court’s discretion.
**Dependency / Termination of Parental Rights**


**Summary by NACC Legal Intern Ellen Pepper, JD Candidate, University of Colorado Law School.**

Joseph was born in December 2004. Joseph’s parents were not married but lived together when he was born. For the first 3 years of Joseph's life, he lived with both of his parents. After several short-term separations, his mother and father permanently separated.

Mother and Father agreed that Father would have weekend visits with Joseph. These weekend visitations occurred without incident, until May 2008 when Father allegedly became intoxicated during a weekend visit. Mother informed Father that he could no longer exercise weekend visitations and that the only visitation she would allow would be at McDonald's with her fiancé's supervision.

Mother and Father agreed that Father would have weekend visits with Joseph. These weekend visitations occurred without incident, until May 2008 when Father allegedly became intoxicated during a weekend visit. Mother informed Father that he could no longer exercise weekend visitations and that the only visitation she would allow would be at McDonald's with her fiancé's supervision.

Father did not agree to Mother’s visitation conditions and began calling her frequently to inquire about seeing Joseph. At some point, the calls became so numerous that Mother obtained a harassment warrant against Father, which resulted in Father spending a short time in jail and a bail condition that prohibited him from contacting Mother in anyway, directly or indirectly.

Mother and her fiancé then filed a petition to terminate Father’s parental rights and to adopt Joseph. The petition was based on three grounds: “abandonment by reason of failure to support, abandonment by reason of failure to visit, and the lack of a meaningful relationship between parent and child.” During the trial, Father testified that he loved Joseph and wanted to do what was best for him. Additionally, there was proof that Father tried to pay his child support when possible but that there were times when he did not pay his child support.

The trial court terminated Father’s parental rights, finding he abandoned Joseph by willfully failing to visit him during the statutorily defined four month period preceding the filing of a termination petition. The trial court emphasized that the Father had failed to go through the legal system to try to obtain visitation rights, stating “[Father] knows or has reason to know that he had rights he could have asserted through a wide open door know as the courthouse.” Father appealed the decision.

The Tennessee Court of Appeals began its review with the standards for termination of parental rights. Terminating parental rights ends all legal rights and obligations of the parent; with such severe consequences, there must be a statutory basis for the termination. Tenn. Code Ann. § 36-1-113(c)(1). Because a parent has a fundamental right to the care, custody and control of his child, courts apply a high standard of proof with parental termination cases. For a court to terminate parental rights one or more statutory claims need to be proven by clear and convincing evidence and it must be proven by clear and convincing evidence that it is in the best interest of the child to terminate parental rights.

Because of the foregoing circumstances, the court of appeals held that the trial court erred in finding that Father’s abandonment was willful. The court found it unnecessary to determine the child’s best interest since there was no clear and convincing evidence of willful abandonment.
Delinquency / Former Delinquent Sex Offenders

Ninth Circuit Holds SORNA’s Retroactive Application to Former Juvenile Sex Offenders Violates Ex Post Facto Clause. United States v. Juvenile Male, 590 F.3d 924 (9th Cir. 2010).

Summary by NACC Legal Intern Ellen Pepper, JD Candidate, University of Colorado Law School.

In 2006, Congress passed the Sex Offender Registration and Notification Act (“SORNA”), requiring adults and juveniles, age 14 or older, who commit an aggravated sexual assault to register as a sex offenders and report regularly to law enforcement officials. SORNA applies “retroactively to all sex offenders convicted of qualifying offenses before its enactment, including juvenile delinquents.”

In this case, S.E., a juvenile delinquent, challenged the constitutionality of SORNA’s retroactive application. Specifically, the issue before the 9th Circuit Court of Appeals was whether SORNA’s retroactive application to juvenile delinquents violated the Ex Post Facto Clause of the U.S. Constitution. This was a matter of first impression for the 9th Circuit and all other circuit courts.

Because S.E. was adjudicated delinquent under the Federal Juvenile Delinquency Act (“FJDA”), the 9th Circuit limited its ruling to adjudications within the federal system. The FJDA’s purpose is to “remove juveniles from the ordinary criminal process in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation.” United States v. Doe, 94 F.3d 532, 536 (9th Cir. 1996). The FJDA therefore requires that juvenile delinquency proceedings be kept confidential and may not be released to the public, with certain express exceptions.

Any statute that retroactively imposes punishment violates the Ex Post Facto Clause. There was no question whether the Act was retroactive. Instead, the question before the court was whether the juvenile registration provision was punitive. If the effect of the Act was punitive, then the Act violated the Ex Post Facto Clause. The court noted that it was irrelevant whether Congress’ intent in passing the Act was punitive.

To determine the effect of the statute, rather than requiring S.E. to suffer and document the effects, the court looked to the practical and logical consequences of the statute.

The Supreme Court in Kennedy v. Mendoza-Martinez set forth various factors to consider when determining whether a statute has a punitive effect. 372 U.S. 144 (1963). The 9th Circuit Court reviewed the factors it determined to be the most relevant to the SORNA retroactive provision.

The first factor the court considered was whether the retroactive application of SORNA’s juvenile registration requirement “impose[d] an affirmative disability or restraint.” The court noted this was one of the most significant factors because of the magnitude of the possible damage to former juvenile offenders. The 9th Circuit contrasted SORNA with a similar statute reviewed in Smith v. Doe that applied to adult offenders only. 538 U.S. 84 (2003). In Doe, the Supreme Court held the statute was constitutional because, while the public registry may have a damaging impact to a convicted sex offender, the damaging impact was not caused by the statute. Rather, the damaging impact was caused by the conviction, which is public knowledge in adult proceedings. By contrast, information regarding juvenile proceedings is confidential and under seal. Confidentiality in juvenile proceedings is not absolute; there are certain exceptions when juvenile proceedings can be opened but the exceptions are rare. Further, the identity and image of juvenile offenders may not be disclosed, even when the proceeding has been opened.

SORNA’s retroactive juvenile registration provision makes confidential, sealed information public. The court noted that by making information public that for years has remained confidential will have serious, damaging consequences for people who were adjudicated delinquent sex offenders years ago. Many of these former delinquent sex offenders will be exposed to humiliation and ostracism. In addition, SORNA requires offenders to register in person every three months for 25 years. Because SORNA makes confidential records public and requires in-person registration, the court determined that the statute “imposes an onerous affirmative disability or restraint for former juvenile offenders.”

Next, the court determined that the statute’s requirements were historically considered punitive. Juvenile adjudications are kept confidential and historically the information from the adjudications is only made public if the case is transferred to adult court. The decision to transfer a juvenile to an adult court is often a decision that the juvenile should be punished rather than rehabilitated.
The court then considered whether SORNA was passed at least in part with “traditional aims of punishment” in mind or if it was passed as a regulatory measure, finding that the main objective of SORNA was to promote public safety through regulation but also that there was some intent to punish former sex offenders.

Lastly, the court considered whether the non-punitive purposes of the provision were excessive to achieve such purposes. Although SORNA was enacted to promote public safety, the court noted that juvenile offenders have a significantly lower recidivism rate than adults and thus pose a lower safety threat. The court ultimately found that SORNA’s provision was not excessive in relation to its goal of improving public safety.

Considering all the relevant *Kennedy v. Mendoza-Martinez* factors, the court held that SORNA’s retroactive application to former juvenile offenders was unconstitutional. The court focused on the fact that SORNA’s provision made confidential information public, therefore changing the juvenile proceeding from rehabilitative to punitive. Making such information, long sealed, public could have devastating affects upon former juvenile offenders.

**Amicus Curiae Update**

The NACC *Amicus Curiae* Program promotes the legal interests of children and families through the filing of *amicus curiae* (friend of the court) briefs in state and federal appellate courts. The NACC files its own briefs and participates as co-*amici* in cases of particular importance to the development of child welfare and juvenile law. In recent years, the NACC has filed briefs in numerous state appellate courts, federal courts of appeal and The Supreme Court of the United States.

To submit a request for the NACC to participate as *Amicus Curiae* in a case, please go to www.NACCchildlaw.org and click on the tab titled Amicus Curiae.

**People v. Gabriesheski, 2009 Colo. LEXIS 417 (Colo. 2009).**

The National Association of Counsel for Children, and signatories Rocky Mountain Children’s Law Center and the University of Colorado Law School’s Juvenile and Family Law Program, filed an *amicus curiae* brief in *People v. Gabriesheski* before the Colorado Supreme Court. The case is set for oral argument before the Colorado Supreme Court on September 28, 2010 at 10:30 a.m. The NACC filed a motion to participate in the argument, which was granted.

The issue before the court is whether the Colorado Court of Appeals erred in concluding that conversations between a child and her guardian *ad litem* in a dependency and neglect case are confidential communications protected by attorney-client privilege. The brief supports the Colorado Court of Appeals opinion, which held that the child is a client of the Guardian ad Litem (“GAL”) and that professional and ethical duties of confidentiality and privilege apply. The trial court and the court of appeals held that in representing a child, a GAL also represents the child’s best interests.

The brief argues that the child is the client of the GAL, and thus the child client is owed the lawyer’s professional and ethical responsibilities including confidentiality and privilege.

Further, the brief argues that a GAL acts as both advocate and guardian, employing all her legal skill to advance the child’s interests zealously and expeditiously while exercising a higher degree of objectivity than in a traditional client-directed relationship.

The court of appeals’ holding gave full effect to the public policy in Colorado of providing high quality
Amicus Curiae Update

legal representation to children involved in dependency and neglect proceedings. Along with competency, confidentiality and privilege are cornerstones of high quality legal representation. Confidentiality and privilege enrich the GAL-child relationship by providing children a unique and open line of communication that encourages them to speak freely and frankly. Confidentiality likewise aids and guides the GAL in fulfilling her duty to investigate and develop the case fully. The brief asserts that this is all the more significant in dependency cases where the compelling interests of the state, children, and parents are uniquely complex, at times divergent, and always at stake.

Amicus curiae brief available at www.NACCchildlaw.org.


The National Association of Counsel for Children, and signatories Rocky Mountain Children’s Law Center and the Colorado Office of the Child’s Representative, filed an amicus curiae brief in Sidman v. Sidman, before the Colorado Supreme Court. The brief was authored by Donna Furth, JD, on behalf of the NACC and its signatories. The case is set for oral argument before the Colorado Supreme Court on September 30, 2010 at 3:00 p.m. The NACC filed a motion to participate in the argument, which is now pending.

In this case, the biological parents of a 19 month old boy relinquished their roles as day-to-day caregivers for many years and consented in 2002 to the permanent appointment of a third party to exercise their parental duties in regard to that child. Parents filed a Motion to Terminate the Guardianship. The district court found that it would be traumatic to return the child to parents. At the time of hearing in August 2007, the child, age seven, had been in the guardians’ care for six years, and looked to the guardians as his psychological parents.

The parents contend that they had a fundamental right to consent to the guardianship in 2002 (with which amici agree) and an equally fundamental right to terminate the guardianship years later, without a showing that doing so is in the best interests of the child. They contend that the burden is on the guardians to show that terminating the guardianship is not in the best interests of the child. The guardians argued that it was the parents’ burden to show that termination of the guardianship was in the child’s best interests.

The district court magistrate, district court judge, and court of appeals agreed with the guardians; hence, the parents sought review in Colorado Supreme Court. The NACC amicus curiae brief urges the court to affirm the judgment of the court of appeals.

Amicus curiae brief available at www.NACCchildlaw.org.
2010 Child Welfare Law Specialists

Congratulations to the 131 attorneys and judges that have just attained their CWLS credential! This was NACC’s largest group to date and has increased the number of certified attorneys nationwide to 364. It was also the first group of CWLS from Georgia, New Hampshire, New York, Texas, and Utah. The 2010 CWLS will be honored at the 33rd Annual Conference Luncheon in Austin, Texas on Friday, October 22, 2010.

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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.

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Federal Policy Update

by Miriam A. Rollin, JD
NACC Policy Representative

Since the previous Guardian update, health care reform legislation (including home visiting provisions) was enacted, and FY2011 appropriations bills have begun to advance.

Health Reform Bills/Voluntary Home Visiting Legislation

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (Public Law 111-148). The law includes an early childhood, voluntary home visitation grant program through the Maternal and Child Health Bureau in HHS with a capped entitlement funding level of $1.5 billion over 5 years. Home Visiting program implementation efforts by the MCH Bureau are now in progress, with key guidance to states already issued.

The health care reform law obviously also has significant impacts on children’s physical and mental health coverage. The complexity of those issues precludes meaningful presentation in this brief update, but the following is an overview of the provisions for children and families that are effective beginning this year, from the Georgetown University “Center for Children and Families”:

March 23, 2010 (date of enactment)
- States must at least maintain the Medicaid and CHIP coverage and enrollment procedures that they have now.

After September 23, 2010 (as a new health plan year begins)
- Young adults can remain on their parents’ health plan until age 26.
- Children with insurance can no longer be denied coverage for pre-existing conditions.
- Insurance plans can no longer impose lifetime caps or restrictive annual limits on coverage, and cannot rescind coverage when a person becomes ill.
- New health plans after September 23, 2010 must provide free preventive care and screenings identified in Bright Futures (the American Academy of Pediatrics’ “gold standard” for preventive care).

Other key provisions that affect families and children (as also reported by Georgetown’s CCF) include:
- Makes coverage more affordable for middle class families by boosting their bargaining power through new health exchanges and providing tax credits to those who need extra help buying insurance.
- Provides Medicaid coverage to low-income families with incomes up to 133 percent of the federal poverty line, allowing children and parents to be covered together.
- Continues the Children’s Health Insurance Program (CHIP) which has successfully worked in partnership with Medicaid to drive down the number of uninsured children to its lowest level in over 20 years (CHIP is continued through at least 2019; funding is provided through fiscal year 2015).
- Provides Medicaid coverage for former foster care children; children up to age 26 who “age-out” of foster care will be eligible to continue receiving Medicaid (and EPSDT benefits).

FY 2011 Budget and Appropriations

In early February 2010, President Obama submitted his FY 2011 budget proposal, which included continued funding for most current programs that benefit court-involved children and families, although there were some proposed funding reductions, most notably in the juvenile justice and delinquency prevention area.

For further information on any federal legislation (including copies of bills, copies of committee reports, floor votes, etc.), visit http://thomas.loc.gov/.
Congress has begun action on the FY 2011 appropriations bills that include the programs that most directly affect court-involved children and families: the Labor/Health and Human Services/Education appropriations bill, and the Commerce/Justice/Science appropriations bill. Both bills have been “marked up” in the House Subcommittees and the Senate full Appropriations Committee. The most notable changes from current levels were in the early care and education programs in the Labor/HHS/Ed appropriations bill: the House Subcommittee bill increases Child Care funding by $700 million over FY2010 and Head Start funding by $866 million above 2010; the Senate Committee bill increases Child Care funding by $1 billion and Head Start funding by $990 million, and also includes a new $300 million Early Learning Challenge Fund that will provide competitive grants to states to raise the quality of early childhood education programs.

**Child Safety in Boot Camps and other Private Residential Programs**

H.R. 911, the Stop Child Abuse in Residential Programs for Teens Act of 2009, was voted out of House Education and Labor Committee on 2/11/09, and was adopted (under suspension of the rules) by the full House of Representatives by a vote of 295-102 on 2/23/09; a similar bill had passed on the floor of the House on 6/25/08, but was never enacted. The legislation sets minimum standards for boot camps and other private residential programs as well as civil penalties for violation of those standards, and provides for federal oversight of such programs, including mandates that complaints of child abuse/neglect in the programs be investigated. No Senate action has been scheduled.

**Gangs Legislation**

On 1/6/09, Senators Feinstein and Hatch reintroduced the latest version of their “gangs bill” as S. 132. This bill includes mandatory minimums and other enhanced penalties, and increased federalization of gang crime, although the bill now also includes some prevention resources, and no longer has the previously-included section providing for expanded prosecution of juveniles as adults in federal court. Companion legislation in the House, H.R. 1022, was introduced on 2/12/09 by Reps. Schiff and Bono Mack. No House or Senate Judiciary Committee markup of any of these bills has been scheduled.

On 2/13/09, the Chairman of the House Judiciary Subcommittee on Crime, Rep. Bobby Scott, introduced the Youth PROMISE Act, H.R. 1064, along with Rep. Castle and several other cosponsors; the bill now has over 230 House cosponsors. The bill would support a variety of proven-effective prevention and intervention approaches to reduce youth involvement in gangs and violent crime. The Senate companion legislation, S. 435, was introduced on 2/13/09 by Senators Casey and Snowe. A House hearing on the Youth PROMISE Act was held in the House Judiciary Subcommittee on Crime on July 15, 2009. House markup of H.R. 1064 was held in the full Judiciary Committee on December 2, 2009. No dates for House floor consideration and Senate Committee action have been set.

**Juvenile Justice Reauthorization Bills**

On 3/24/2009, S. 678, a bill to reauthorize and improve the Juvenile Justice and Delinquency Prevention Act, was introduced by Senators Patrick Leahy, Herb Kohl, and Arlen Specter. The Senate Judiciary Committee marked-up the bill on December 17, 2009, but no Senate floor action has been scheduled, and no House companion bill has been introduced yet. On 3/16/2009, Rep. Bobby Scott (Chairman of the House Judiciary Subcommittee on Crime) introduced a simple reauthorization bill (H.R. 1514) for the Juvenile Accountability Block Grants (JABG) program; on May 19, 2010, H.R. 1514 passed the House (under suspension of the rules) by a vote of 364-45. No Senate action has yet occurred on this legislation.
York. The bill removes the term “legal guardian” from the law and replaces it with “attorney” or “counsel” for the child. In doing so, the role of lawyers representing children becomes unambiguous: attorneys are to zealously advocate for their child-client’s wishes, so long as the child is capable of “knowing, voluntary and considered judgment,” even if they think those wishes are not in the child’s best interest. The new law requires that attorneys serve their child-clients as they would an adult-client in any other civil proceeding. While the rule defines a lawyer’s role as advocate, it also allows an attorney unconvinced of her client’s decision-making capability to inform the court of her concerns so as to prevent “substantial risk of imminent harm” resulting from the child’s unconsidered judgment. Most notably however, the new bill provides clearly defined roles for child representatives and gives voice to children in proceedings that will fundamentally impact their lives. To read more, see Joel Stashenko, Revised Wording Signals New Approach to Representation of Children, NY Law Journal, Apr. 20, 2010, at 1.

The brief is a product of the National Quality Improvement Center on Nonresident Fathers and the Child Welfare System (QIC NRF). The QIC NRF, through research, seeks to understand the relationship between children, noncustodial fathers and the child welfare system. The QIC NRF has developed materials and guidance for lawyers, judges, social workers and fathers on the importance of father engagement.

New York Changes Wording and Role of Child Representatives

Governor David A. Paterson recently approved a comprehensive change in statutory language that clearly defines the roles and responsibilities of lawyers representing children in New York. The bill removes the term “legal guardian” from the law and replaces it with “attorney” or “counsel” for the child. In doing so, the role of lawyers representing children becomes unambiguous: attorneys are to zealously advocate for their child-client’s wishes, so long as the child is capable of “knowing, voluntary and considered judgment,” even if they think those wishes are not in the child’s best interest. The new law requires that attorneys serve their child-clients as they would an adult-client in any other civil proceeding. While the rule defines a lawyer’s role as advocate, it also allows an attorney unconvinced of her client’s decision-making capability to inform the court of her concerns so as to prevent “substantial risk of imminent harm” resulting from the child’s unconsidered judgment. Most notably however, the new bill provides clearly defined roles for child representatives and gives voice to children in proceedings that will fundamentally impact their lives. To read more, see Joel Stashenko, Revised Wording Signals New Approach to Representation of Children, NY Law Journal, Apr. 20, 2010, at 1.


This practice brief offers attorneys a new tool to advocate on behalf of children by reaching out to their fathers. It provides tips on identifying and locating the fathers of children who enter the child welfare system. It also helps attorneys assess fathers’ capacities to be a placement or other resources for their children. Attorneys learn how to involve paternal relatives in case planning, and recognize how fathers learn and seek help differently than mothers, among other things. To obtain a free downloadable copy of this brief visit www.fatherhoodqic.org.

Please submit children’s law news and job openings to: The Guardian, 13123 East 16th Avenue, B390, Aurora, CO 80045 Fax: 303-864-5351 • advocate@NACCchildlaw.org

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Triathlete Racing at Ironman Louisville to Raise Funds for The Children’s Law Center

When Washington, DC, resident and triathlete Meredith Kimmel steps up to the starting line at Ironman Louisville, (2.4 mile swim, 112 mile bike, 26.2 mile run) she won’t be competing just for herself. She’ll also be raising funds for the Children’s Law Center of Washington, DC.

Kimmel is raising money through the Janus Charity Challenge, an innovative program designed and sponsored by the investment management firm, Janus. The program helps motivate Ironman athletes to use their race experience to raise money for charity. But unlike most other race fundraising programs, there is no pre-determined beneficiary. Instead, Janus Charity Challenge participants can choose their favorite nonprofit organization(s) as their beneficiary. Since the program’s inception in 2001, triathletes have raised more than $42 million for hundreds of charities throughout the United States. Janus also makes additional contributions to the beneficiaries of the top fundraisers at each of the full-distance U.S. Ironman races.

“Through their generosity and commitment, Janus Charity Challenge athletes are making the most of a great fundraising opportunity” said Casey Cortese, AVP of Janus Corporate Sponsorships. “These triathletes are taking their race to a higher level by providing much-needed support for nonprofit organizations throughout the country.”

The Children’s Law Center provides free, comprehensive legal services to thousands of low-income and at-risk children in Washington, DC to ensure they have safe homes, a meaningful education and healthy lives. Applying the knowledge gained from representing children and families, it advocates for changes in the city’s laws, policies and programs. Children’s Law Center is the largest nonprofit legal services provider in the District and the only to focus on children. For more information, visit [www.childrenslawcenter.org](http://www.childrenslawcenter.org).

Kimmel says she chose the Children’s Law Center because “there’s no greater advocate for children in Washington than the Children’s Law Center.” She hopes you will support her fundraising efforts. To make a contribution, go to [www.januscharitychallenge.com](http://www.januscharitychallenge.com) and click on “How to Donate.”

Ironman Louisville will be held in Louisville, Kentucky on August 29, 2010. You can track Kimmel’s progress on race day live on [www.ironmanlive.com](http://www.ironmanlive.com).
The Swedish Approach to Children and the Law

by Erik Pitchal
Mr. Pitchal is an NACC board member and an assistant clinical professor of law at Suffolk University in Boston, where he teaches the child advocacy clinic and family law.

This past summer, I was lucky enough to live in Sweden for a month, teaching a course I developed called Children and the Law in Comparative Perspective. Suffolk University runs an ABA-approved summer program at the University of Lund, where we enroll mostly American law students along with a handful of Swedish students. It is a wonderful opportunity for students and professors alike to study comparative and international law in a setting very different from the usual grind of law school. I was very fortunate to be joined for most class sessions by Prof. Titti Mattsson of the Lund law faculty, who writes and teaches in the area of social welfare law and has a particular interest in the legal representation of children; she also helped me identify appropriate materials about Swedish law.

To the extent that Americans give much thought to Sweden, most people probably think of it as a bastion of democratic socialism (whether that is a good or bad thing, depending on one’s own political ideology). The stereotype of Swedish social policy is that the government is far more involved in providing financial support to individuals and families than is common in the U.S. While I found confirmation of this notion in broad brushes, the close-up view is far more nuanced and complex, especially concerning children and the law. We could learn quite a bit from the way Sweden treats its children, but there are some aspects of the Swedish approach that might not be fully embraced by America’s child advocates.

The most notable observation about the way Sweden thinks about children is that — like every other country in the world besides the U.S. and Somalia — Sweden has ratified the United Nations Convention on the Rights of the Child. By doing so, it has declared that children are vested with a constellation of specific human rights and has made a commitment to giving life to those rights. Thus, in 2009, the Swedish government redesignated its children’s policy as a “children’s rights policy.” As in many Scandinavian countries, Sweden has a national Children’s Ombudsman, whose office plays a significant role in promoting the rights contained in the Convention and reminding the government and the population about the importance of implementing those rights.

Sweden thus has a robust positivist approach to children’s rights, which is the source of its extensive social safety net. The government provides families with children countless financial benefits, irrespective of means. Among these include paid parental leave for up to 480 days; additional paid parental leave until the child’s third birthday, offered by some cities in lieu of government-provided pre-school; paid leave for pregnant women in their final two months of pregnancy; paid parental leave for up to 60 days a year to care for a sick child; a monthly child allowance of about $150 (with smaller additional amounts for each additional child); and additional child allowances if parents are divorced, payable to the primary custodian. There is a “gender equality bonus” of paid parental leave if the father also takes a leave from work to care full-time for the child before or after the mother’s leave.

With these benefits comes a societal attitude in Sweden that caring for children is the business of the entire community and not just their immediate families. As Prof. Mattsson pointed out to the class, the role of the state is “complementary” to that of parents, and not seen in Sweden as antagonistic or an entity to be feared, in contrast to the primarily negative rights approach in the U.S. Thus, at the same time that Sweden offers generous benefits, the state is also more apt to insert itself in families’ lives. For example, Sweden provides excellent and free pre-natal care to expecting mothers and health care to children. However, if a new mother fails to show up for well baby visits, the pediatric clinic is
likely to send a nurse to the home to make sure everything is okay.

Sweden was also one of the first countries in the world to ban corporal punishment in the home, over 30 years ago. While there is still some reported use of corporal punishment, after several decades of the ban, social attitudes have shifted markedly. The class discussion about this topic was quite lively, as the Swedish student was flabbergasted both that Americans still hit their children and that her new friends in the course support such parenting choices.

Lest an American child advocate think that with its approach the Swedish government is also removing children into foster care at a high rate, it turns out the opposite is true. The child welfare agency in Sweden — generally known in each county as the Social Welfare Committee — goes the extra mile to provide preventive services and otherwise support families so that their children can be kept safely at home. Social workers can remain involved with families for years.

There are also different cultural attitudes about what constitutes neglect. Some American child advocates may recall a case from New York City about 15 years ago involving a Danish woman on vacation who left her baby in its stroller outside a restaurant where she was dining. CPS removed the child and an international incident ensued. In Denmark — as in Sweden — it is actually customary for parents to leave their children in strollers like this, for the purpose of giving them fresh air. My wife and I saw this throughout Copenhagen, even when the weather was somewhat cold and rainy.

That said, when the Committee decides that a child cannot be maintained safely at home, the approach to handling these matters is quite different than in the U.S. First, about three-fourths of foster care placements in Sweden are done pursuant to a voluntary agreement with the parent, because most Committees think it is important to work cooperatively with parents. (Interestingly, when children are 15 or older, they must also consent to placement in foster care, or else the Committee must take the matter to court — even if the parent has agreed on the need for substitute care.) An American lawyer might question just how voluntary these cases are, however, because the parent does not have an attorney at this stage of the process and Sweden does not use a family group conferencing model. When parents do not consent to placement, the Committee files a petition in the local administrative court — a separate judicial structure from the ordinary civil courts. Administrative courts are typically quite deferential to the action of government agencies, and hearings in child welfare matters are often done on the papers.

As in the U.S., family reunification is the initial plan for most cases where a child is placed into state care, but because the Committee has provided in-home services to many families for so long before removing the child, reunification does not occur as rapidly or as frequently as in most American jurisdictions. On the other hand, public adoptions are virtually non-existent in Sweden, because there is no such thing as involuntary termination of parental rights. The only way a foster child can be adopted is with parental consent. However, if there has not been reunification within three years, the Committee is obligated to consider establishing a permanent guardianship with the foster parent. Children aged 12 and older must consent to an adoption, and there are no barriers to gay and lesbian people adopting. (Sweden does not permit same-sex marriage, but there is a domestic partnership law.)

On the juvenile justice side, it is interesting to note that in Sweden the minimum age for delinquency jurisdiction is 15; younger children who are suspected of committing a crime are treated as status offenders. Secure detention is used only rarely. However, as Sweden experiences increasing immigration and struggles to continue providing the same generous level of financial support to families in these days of worldwide fiscal crisis, discussions are beginning about whether to clamp down on juvenile crime. For example, Sweden recently created a system of juvenile incarceration. The purpose of this was to comply with the U.N. Convention’s requirement that children under 18 who are jailed be kept separate from adults. However, juvenile detention is now being used in cases that previously would have resulted in a probation order.

Every country’s legal system is a reflection of its own social norms. So too is the way each nation treats its children. There are certainly aspects of the Swedish approach to children and the law from which we can learn, and others that we might reject out of hand. Regardless, there is a lot to be learned from how other countries handle the same difficult issues that we confront in our child advocacy work every day.
Vice President of Marketing & Development, Massachusetts Society for the Prevention of Cruelty to Children
Boston, MA

The Vice President of Marketing & Development reports directly to the President & CEO of the Massachusetts Society for the Prevention of Cruelty to Children and is an exempt status position.

Primary Responsibilities of position include:
• Support the development of the strategic direction, program development, corporate image, and market position of the agency;
• Set tone and direction of Development Department and interaction with other agency departments as well as Board, Committee members, Donors, associated agencies and Volunteers;
• Establish Development’s fundraising goals in collaboration with the President & CEO, CFO and Comptroller;
• Work with the Development Committee and other relevant Board committees and Volunteers to design, staff, and implement a comprehensive annual (July 1–June 30) program of fundraising.
• Write, design, and produce development materials in support of fundraising plans, as appropriate;
• Establish and cultivate relationships with major donor prospects;
• Hire and supervise staff to implement fundraising objectives;
• Evaluate the effectiveness of the fundraising plan;
• Report on fundraising status to Board and President & CEO.

Qualifications
Bachelor’s degree. Advanced degree desirable. Eight (8) years experience in private sector fundraising, with proven track record. Experience in annual and capital fundraising. Good working knowledge of local, regional, corporate and national funding sources. Familiarity with development software. Experience managing a Development Department. Understanding of marketing, advertising, PSAs and public relations strategies, including direct mail, online and social media. Demonstrated sensitivity to the needs of families from diverse cultural and linguistic backgrounds. Experience in volunteer management.

This position is open until filled. Cover letters/resumes should be sent to the attention of Marylou Sudders, President & CEO of MSPCC c/o Teresa Reynolds, via email treynolds@mspcc.org or faxed to (617) 587-1584.

NACC Law Student Internship Program
Aurora, CO; Winter and Spring 2011 Internship; Part-time; Compensation: Unpaid or Academic Credit

Internship General Description
The intern assists with substantive legal matters in conjunction with the Staff Attorney / Resources Director. Specifically, these responsibilities include managing and updating the NACC’s National Children’s Law and Advocacy Resource Center, responding to resource requests, handling referrals, conducting research, writing case summaries for The Guardian, and assisting in the administration of the NACC’s Amicus Curiae program.

Qualifications
• Minimum of 1 year of law school completed; demonstrated interest in child welfare law

Application Deadline
• Open until Filled

How to Apply
Send resume and cover letter via email to Anne Kellogg, JD, NACC Staff Attorney / Resources Director, at: Kellogg.Anne@tchden.org.
Conferences & Trainings

October 20-23, 2010, Austin, TX
NACC 33rd National Child Welfare, Juvenile, and Family Law Conference
For more info, visit: www.NACCchildlaw.org.

Scholarships to NACC Conference: The Texas Supreme Court Permanent Judicial Commission for Children, Youth, and Families has created scholarships for eligible Texas attorneys. A limited number of registration scholarships will be available to Texas attorneys who accept court appointments to represent parents or children in CPS cases or who represent DFPS in CPS cases. Attorneys who qualify for the registration scholarships will be notified by the NACC and given a promotion code for on-line registration.

Please note that the scholarships are for registration fees only, they do not include funding for travel and lodging. Eligible attorneys may receive scholarships to cover the registration costs of both the pre-conference and conference training.

Texas Scholarship Form: http://www.NACCchildlaw.org/?page=TexasScholarship.

Publications

The 2009 Children’s Law Manual is a compilation of articles authored by presenters and produced in conjunction with the National Child Welfare, Juvenile, and Family Law Conference.
To order, call 888.828.NACC, or online at: www.NACCchildlaw.org.

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Born for Love: Why Empathy Is Essential — and Endangered

Handbook of Infant Mental Health, Third Edition

Wrongful Death of Children in Foster Care


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

By William Wesley Patton (Cambridge University Press). Available at: www.cambridge.org/.

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NACC Affiliate News

NACC affiliates assist in fulfilling the NACC mission and provide members the opportunity to become more directly and effectively involved at the local level. If you are interested in participating in local activities through an affiliate, or wish to interact with other professionals in child welfare, juvenile, or family law, please contact the NACC. The NACC will direct you to a local affiliate, or assist you in forming one in your area. Affiliate development materials and a current list of affiliates are available at: www.NACCchildlaw.org/about/affiliates.html.

Arizona Association of Counsel for Children (AACC)

The AACC is currently seeking members to run for executive offices and the board of directors. All individuals interested in running and revitalizing the affiliate, should contact AACC president Ann Haralambie at: Ann.Haralambie@azbar.org.
Thank You

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