The National Center for Adoption Law and Policy
and the Capital University Law Review Present

The 9th Annual Wells Conference on Adoption Law:
RETHINKING CHILDREN’S BEST INTERESTS

Thursday, March 14, 2013
Capital University Law School

AGENDA

8 - 8:45 am  Registration

8:45 – 9:00 am  Opening Remarks – Dean Richard C. Simpson

9 – 10:15 am  PANEL I: The New Face of Family and Children’s Best Interests

Annette Appell, Professor of Law and Co-Director of the Civil Justice Clinic, Washington University Law
“Certifying Identity”
This presentation will examine the legal fiction and authority of the birth certificate. This record is among the most important legal documents the law has developed to create and maintain personal identity, and to impose family norms, racial distinctions, and gender and gender norms. The certificate “of birth” is a powerful and essential legal document that is surprisingly malleable for all of its resoluteness and authority. It creates (and recreates) legal identity, including name, sex, race, country of origin, biological parentage and, indirectly, citizenship. This certificate establishes belonging, identity, and power more broadly as well, in the form of family rights and privileges, what it means to be a parent, what it means to be a child, and when a person is authorized to exercise various rights and privileges, such as driving or voting.

Cynthia R. Mabry, Professor of Law, Howard University School of Law
“Keeping the Lines of Communication Open: Post Adoption Contact between Birth Relatives, Adoptees and Adoptive Parents”
Using selected cases and statutes, this presentation will cover the types of contact agreements; advantages and disadvantages of entering such agreements for adoptees, adoptive parents and birth parents; whether contact is in the adoptee's best interests; who may be entitled to or ordered
to have contact; suggested and required provisions for agreements; bases
for modification and termination; and, enforcement of these agreements.

10:15 – 10:30 Break

10:30 am–11:45 pm PANEL I, cont’d

Lynne Marie Kohm, John Brown McCarty Professor of Family Law,
Regent University School of Law
“Rethinking Mom and Dad”
Exploring conflicts and issues that arise when determining the best
interests of a child in a number of contexts, this proposal considers
rethinking the best interests of a child in having two dual gender parents,
namely a father and a mother. “Rethinking Mom and Dad” will focus on
child adoption from many angles such as same sex parenting, parental
incarceration, juvenile delinquency, contested adoptions, and adoption
using reproductive technologies. Should dual gendered parenting hold
more or less weight in a best interest of the child analysis? If not, why
not? And if so, why? Can the law do so within equal protection
guidelines? Should gender of the parent ever be a relevant consideration
in the adoption of a child? This presentation will consider constitutional
requirements, social science, and legal parameters in determining a child’s
best interests of having both a mom and a dad, while offering innovative
resolutions to the best interests of children missing one or the other

Mellisa Holtzman, Associate Professor, Department of Sociology, Ball
State University
“Judicial Decision-Making in Contested Adoptions: The Influence of
Children’s Best Interests Arguments”
This presentation examines the various factors that influence judicial
decision-making in contested adoptions. Contested adoptions are custody
disputes that typically involve a biological and a nonbiological parent
(e.g., unrelated adoptive parents, stepparents, GLBTQ co-parents, foster
parents, etc.). As such, these cases are generally more complicated than
custody disputes involving two divorcing, biological parents. In the case
of divorcing parents, judges are typically charged with determining
custody based on the child’s best interests. Although judges retain a great
deal of discretion regarding what constitutes a child’s best interests and
custody law is therefore both criticized as indeterminate and lauded for
being capable of adaptation and change, decisions are nonetheless
generally guided and constrained by the existing case law and divorce
statutes for the state. The legal landscape is, however, more complex
when nonbiological litigants are involved because additional doctrines and
statutes are relevant to the decision-making process and definitions of the
family, which are largely extralegal influences, become important as
judges attempt to determine who qualifies as a parent and what rights they do and do not have. Judges, then, are often faced with juggling various statutes, doctrines, and societal factors during the decision-making process.

12:00 – 1:00 pm  Lunch Presentation: Assisted Reproductive Technology and Children’s Best Interests

Angela Upchurch, Professor of Law, Capital University Law School
Denise Bierly, President, the American Academy of Adoption Attorneys
Judith Sperling-Newton, Director, American Academy of Assisted Reproductive Technologies Attorneys.

1:00 – 2:45 pm  PANEL II: The Indian Child Welfare Act and Children’s Best Interests

Marcia Yablon-Zug, Associate Professor of Law, University of South Carolina School of Law
“The Indian Child Welfare Act and Veronica Capobianco”
On July 26th, the South Carolina Supreme Court issued a decision affirming the return of Veronica Capobianco to her biological father. Under South Carolina law, the court had grounds to terminate the father's parental rights. However, because the father was a member of the Cherokee tribe and Veronica was also eligible for enrollment, South Carolina law did not apply. Instead, the adoption was governed by the Indian Child Welfare Act, a federal statute passed in 1978 to stem the alarmingly high numbers of Indian children being removed from Indian families and placed in non-Indian homes. After analyzing Veronica's case in accordance with ICWA's mandates, the courts invalidated both the termination and the adoption. The Capobianco case has received significant national attention and most of these news stories express shock and outrage at Veronica's return. In these news stories, ICWA is described as an "obscure 1970's law" or "a federal loophole" that must be overturned. In fact, the Capobiancos and their supporters are seeking to have the Supreme Court invalidate ICWA or have Congress amend the statute. However, while Veronica's case is heartbreaking, it does not reveal problems with ICWA. ICWA is a good law and it operated exactly as it was intended. Instead, what Veronica's case reveals are the problems with ignoring ICWA's adoption and placement requirements.
Geri Wisner-Foley, Tribal prosecutor and practicing attorney and former Senior Tribal Attorney with the National Center for Prosecution of Child Abuse at the National District Attorneys Association (NDAA)
“The Indian Child Welfare Act in Practice”
Abstract to Come

2:45 – 3:00 pm  Break

3:00 – 5:00 pm  PANEL III Representation of the Child and Children’s Best Interests

Megan Chaney, Director of Clinical Programs and Experiential Learning and Associate Professor of Law, University of LaVerne College of Law
“Post-Adjudicatory Juvenile Defense Attorneys: Exploring a New Wave in Therapeutic Jurisprudence”
In the article Keeping the Promise of Gault: Requiring Post-Adjudicatory Juvenile Defenders, 29 Geo. J. Pov. L & Pol. 351 (2012), I explain that because the purpose of the juvenile justice is rehabilitation, juvenile court can be aptly described as a problem-solving court, much like adult drug courts and prostitution courts. Problem-solving courts use law as a therapeutic agent of change: therapeutic jurisprudence. I propose that for the juvenile court successfully to achieve its stated goal, a new type of lawyer must be installed at the post-adjudicatory phase of the juvenile proceeding to represent the child client. This new lawyering role ought to be defined by the principles of therapeutic jurisprudence and operate within a new paradigm to ensure successful rehabilitation for his client.

Garry I. Bevel, Director of the American Bar Association’s Commission on Youth at Risk and Assistant Director of the ABA Center on Children and the Law’s Opening Doors for LGBTQ Youth in Foster Care project
“Seen and Heard: Involving Children in Dependency Court”
"All I ever wanted was to be heard and not just dismissed." This quote from a youth in foster care is common. Youth have rarely been allowed to participate in their dependency court proceedings. The 2006 amendment to the Promoting Safe and Stable Families Program now requires the court to consult with the child, in an age-appropriate manner, about the child’s permanency plan. As a result, many courts are starting to implement policies and procedures to involve youth in their dependency hearings. In this session we will discuss the advantages for youth and courts of involving youth; present strategies for successfully encouraging youth participation; and share systemic changes that can be easily made to make the court process more inviting and meaningful to youth.
We often hear headlines regarding children who have died while in the child welfare system, usually after being mistreated by foster parents or returned to unfit birth parents. After listening to these stories, my first question is: where was the child’s attorney or guardian ad litem (“GAL”)? Was this an unexpected incident or was there something that the child’s legal representative should have done to prevent the tragedy? Even beyond this extreme circumstance, there are a number of ways that lawyers can prevent further harm to their clients. Simple tasks, such as meeting with the child client regularly and reviewing all medical and psychological records, can go a long way towards keeping the court informed about the child’s well-being and assisting the state in selecting an appropriate adoptive family. State legislatures and the judiciary must hold children’s attorneys and GALs to the same high standard set for providing legal services to adults. I will discuss why states and the judiciary should mandate training and accountability for children’s representatives, and how lawyers can help change the law in their state.