

Social Work & the Courts

SectionConnection...

ISSUE ONE- 2010

INAUGURAL EDITION OF SOCIAL WORK AND THE COURTS' SECTION CONNECTION NEWSLETTER

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Publication of articles does not constitute endorsement by NASW of the opinions expressed in the articles. The views expressed are those of the author(s).

Dear Colleague:

Welcome to the inaugural edition of Social Work and the Courts' *SectionConnection* newsletter. This edition debuts in the new electronic format for Specialty Practice Section newsletters in support of NASW's Green Initiative. Included in this edition are national policy issues in criminal justice reform; a book review on conducting child custody evaluations; and information on the NASW Legal Defense Fund (LDF), a member resource we encourage you to use. LDF provides financial legal assistance and support for legal cases and issues of concern to NASW members and the social work profession, as well as offers pertinent legal resources, such as amicus curiae (friend of the court) briefs, "Legal Issue of the Month" articles, and Law Notes.

Section members are invited to submit articles, resources, and links to contribute to an interactive community of professional social workers whose work intersects with the courts. Section members include those who perform community safety or offender assessments; forensic evaluations; custody and guardianship recommendations; mediation or parent coordination; expert testimony in civil or criminal matters; and work in the areas of corrections, law enforcement, or probation/parole. As a member of this new section, you will be able to help shape and grow its direction.

NASW Social Work and the Courts Specialty Practice Section (SPS) was developed in response to a membership survey conducted in 2009. The Section aims to provide content and professional development opportunities for its members.

Once again, welcome to the first edition of *SectionConnection*, now in electronic format.

Warmest regards,
Specialty Practice Sections
Committee and Staff



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Did You **Know?**

NASW OFFERS WEB COURSES ON ETHICS

NASW has launched a new Web education course for members, *An Advanced Course in Ethics and Malpractice Risk for Social Workers*. The new NASW WebEd course is free to members and offers 3.0 social work continuing education credits if you complete and pass the online post-test. It identifies steps that will help you make ethical decisions. It also incorporates the application of an ethical decision-making framework and provides information and tools for managing risks. *Understanding the NASW Code of Ethics* (3.0 CE credits) is also available to members free and is a beginning or refresher course in ethics. Take either course today at NASWebEd.org. **NASW members only.**

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NASW PRESS HAS TITLES ON LEGAL ISSUES

The following titles are available from NASW Press:

- **NASW Law Note:**
Legal Rights of Children
NASW General Counsel, NASW Legal Defense Fund
- **The Legal Environment of Social Work**
Leila Obier Schroeder
- **Child Custody Evaluations by Social Workers:**
Understanding the Five Stages of Custody
Ken Lewis

Social Work & the Courts

SectionConnection

**A NEWSLETTER OF THE NASW
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CRIMINAL JUSTICE REFORM: WHY SOCIAL WORKERS SHOULD CARE

Mel Wilson, MSW, MBA, LCSW-C

Extraordinary increases in the nation's prison population—approximately 2.3 million people as of 2008, according to a recent Pew Foundation report—have driven a steadily growing movement to reform the criminal justice system. While the initial impetus for change came from reform advocates, the movement now has a very broad range of adherents, including law enforcement agencies and associations, national associations representing the criminal justice workforce, state departments of corrections, local governments, federal departments and agencies, and the Executive Branch and members of Congress. Given this level of support, it is clear the momentum for overhauling the criminal justice system is irreversible and long term.

Currently, the National Criminal Justice Commission Act of 2010, the Criminal Justice Reinvestment Act of 2010, and legislation to prevent violence (especially rape) are at various stages of being made into law. The Fair Sentencing Act (Crack Cocaine Sentencing Reform) was signed into law in August 2010. The Second Chance Act was signed into law in 2008.

Each of the legislative initiatives above has merit in its own right. However, the creation of a National Criminal Justice Commission is perhaps the most important of the group. The act that will establish the National Criminal Justice Commission is the most comprehensive and far-reaching legislative proposal of the group. The Commission is intended to set into motion an ongoing review and overhaul of the entire national criminal justice system and will consist of 14 members who will be citizens of national prominence with qualifications in the areas of

- Law enforcement
- Criminal justice
- Prison and jail administration
- Prisoner reentry

- Public health, including physical and sexual victimization, drug addiction, and mental health
- Victim's rights
- Civil liberties
- Court administration
- Social services
- State, local, and tribal government

What Does the Passage of the National Criminal Justice Commission Act of 2010 Mean to Social Workers?

There are two important reasons why the social work profession should care about the passage of the National Criminal Justice Commission Act of 2010. The reasons are as follows:

1. The Commission's mandate includes a review of the quality and quantity of core psychosocial services available to inmates and to recently released offenders once they return to their communities. This renewed emphasis on services, such as substance abuse treatment, health care, mental health treatment, education/employment programs, and housing, is a tacit acknowledgment that rehabilitation has an equal place as a means to deter re-arrests and re-incarceration as does the so-called "punishment" approach to deterrence.

Also, as a practical matter, the expansion of psychosocial services targeting inmates and those who are reentering their communities creates employment and entrepreneurial opportunities for social workers. It is important to be reminded that, as of 2009, funding for services for reentry programs has reached \$222 million. Once the National Criminal Justice Commission Act of 2010 is passed and signed by the president, it is likely that the increased funding for innovative programming will continue in future years.

2. The second reason why the National Criminal Justice Commission Act of 2010 is important to social workers is its underlying attempt to eliminate (or at least mitigate) racial and social class disparities in arrests and sentencing of offenders. The elimination of such disparities is compatible with the long-standing value of *social justice* embraced by NASW since its inception. This is evidenced by a provision in the Act that directs the Commission to “make findings regarding such review and recommendations for changes in oversight, policies, practices, and laws designed to prevent, deter, and reduce crime and violence,

improve cost-effectiveness, and ensure the interests of justice at every step of the criminal justice system” (National Criminal Justice Commission Act of 2010).

Ingrained in this statement is the commitment to review and make recommendations on sentencing disparities in areas such as mandatory minimum sentences, disparities in crack cocaine versus powder cocaine convictions, and the imposition of life sentences without the possibility of parole for juvenile offenders. Each of these areas often affects minority and low-income offenders disproportionately.

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Conclusion

It is without a doubt that, out of necessity, the nation's criminal justice system is evolving and moving to a more rehabilitative model that will include expanded access to essential psychosocial services for inmates and reentrants. The work of the Commission will lead to a close review of national arrests and sentencing practices in an attempt to eliminate disparities that unfairly punish racial/ethnic minorities (especially African Americans), and low-income people in general.

For social workers, this should be a welcomed turn of events. Social workers, like the rest of society, support public safety and the rule of law. However, social work values also embrace the philosophy of social justice. The two ideals are not mutually exclusive. It is possible to reform the system while maintaining public safety.

Similarly, we should not minimize the effect a system-wide reform can potentially have on employment and business opportunities for social work practitioners and entrepreneurs. The expansion of community-based services that target ex-offenders is already underway. Many of the services are practice areas in which social workers have expertise. Therefore, it is imperative for social work practitioners to remain informed about career-related opportunities criminal justice reform will have to offer.

Social workers make up a significant part of the criminal justice workforce. The profession is a major stakeholder in initiatives that directly affect social work practitioners and administrators in the criminal justice system at both federal and state levels. Consequently, we, as social workers, should become proactive on state and national levels to stay well-versed in any changes in these evolving areas of social work practice.

Mel Wilson, MSW, MBA, LCSW-C, is a manager with the National Association of Social Workers (NASW) Office of Workforce Development and Training. He is responsible for analyzing national issues that affect social workers as a workforce. In addition, he develops training and education information on developing workforce trends that concern NASW members and other social workers. Mr. Wilson has extensive knowledge of various comprehensive service delivery systems in which social workers practice. He can be contacted at mwilson@naswdc.org.

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- National Criminal Justice Commission Act of 2010, H.R. 5143. Retrieved from www.govtrack.us/congress/bill.xpd?bill=h111-5143&tab=summary.

Resources

- Reentry Policy Council (RPC). www.reentrypolicy.org/about_us/reentry_policy_council. The RPC is a national project established in 2001 and coordinated by the Council of State Governments Justice Center to assist state government officials grappling with the increasing number of people leaving prisons and jails to return to the communities they left behind.
- Sabol, W.J., West, H.C., & Cooper, M. (2009). *Prisoners in 2008*. Washington, DC: U.S. Department of Justice Bureau of Justice Statistics. Retrieved from <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>.

NASW LEGAL DEFENSE FUND: WHAT SOCIAL WORK MEMBERS NEED TO KNOW

The NASW Legal Defense Fund (LDF) was established in 1972 by the NASW Board of Directors to assist social workers and the social work profession in defending against lawsuits and to protect legal and ethical principles important to the social work profession.

The LDF Trust Agreement articulates the main purposes of the Legal Defense Fund. These include:

- Providing funds to help defray the cost of counsel and other legal expenses for the effective assistance of NASW members;
- Promoting the interests of the social work profession or of a significantly large group of NASW members in such matters as pay equity and declassification or to challenge restrictions that tend to bar social workers from qualifying as providers of services under managed care arrangements or other health and mental health settings; and
- Providing educational activities and materials related to advocacy or legal defense and professional social work issues.

During its existence, the NASW Legal Defense Fund has provided financial support to numerous members' cases (individuals, groups, or class actions), as well as support for "friend of the court" briefs (amicus briefs). The funds for LDF case support and other projects have come principally from member contributions to the LDF fund at the time of their NASW membership renewal. NASW member contributions allow the LDF Board to increase the number of cases and legal projects that it can support to make relevant social-work-related legal resources and information available to all members.

In addition, the Legal Defense Fund has underwritten numerous educational projects. The dollars for these projects are provided in certain instances by the Aileen Neely Fund, a

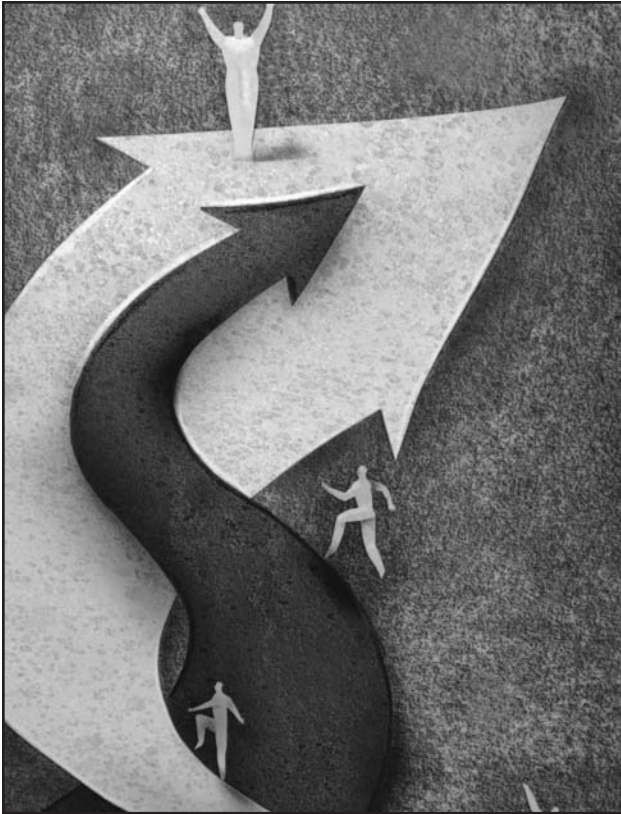
designated fund for LDF education projects housed within the NASW Foundation. The Aileen Neely Fund was begun with a bequest from the Aileen Neely estate.

Carolyn I. Polowy, JD, NASW General Counsel, oversees and directs the operations of the Legal Defense Fund. Sherri Morgan, JD, MSW, LDF Associate Counsel, manages the daily functions of the Fund and its numerous legal and educational projects. Carla McClinton, LDF Legal Assistant, assists LDF in administrative matters, responds to members' requests for information, and prepares legal research. In addition, several law students have served as law clerks for LDF.

LDF Amicus Curiae Briefs

NASW and/or LDF are frequently requested to initiate the filing of a brief with a unique social work outlook or to sign amicus curiae (friend of the court) briefs prepared by other organizations with shared interests in a particular policy area. Staff support is used to coordinate the inclusion of NASW, the relevant state chapter, and a social work perspective into the amicus briefs. The support of well-qualified pro bono legal counsel is utilized in most cases to facilitate NASW's participation as a friend of the court.

The topics addressed in NASW's amicus briefs include a broad range of issues, such as same-sex marriage, child custody and adoption rights of same-sex couples, strip searches of minor school children, prosecution of pregnant women addicted to illegal substances, employment discrimination, and medical records privacy. Each brief is grounded in NASW policy as articulated in *Social Work Speaks*. NASW members can access the online Amicus Brief Database at SocialWorkers.org/ldf. NASW username and password are required.



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Legal Issue of the Month

LDF's "Legal Issue of the Month" articles provide overviews of legal topics relevant to the profession. NASW members can log in to the Legal Issue of the Month online database at SocialWorkers.org/ldf. Sample Legal Issue of the Month articles include the following:

- Preventing and Responding to Electronic Privacy Breaches (September 2010)
- Social Workers and the Supreme Court (July 2010)
- Children's Treatment Records: Parental Access and Denial (June 2010)
- Social Workers and Conscience Clauses (May 2010)
- Mental Health Parity and Addiction Equity Act Interim Final Rules (April 2010)
- Disclosing Confidential Information to Social Workers' Business Associates (March 2010)
- HIPAA Amendments for a New Decade: 2010 and Beyond (February 2010)
- Social Workers, Immigration Policies and State Benefits (January 2010)

Law Note Series

The NASW General Counsel Law Note series provides information to social workers about legal topics of concern to the social work profession. The Law Notes are developed with the support and financial assistance of the NASW Legal Defense Fund. Law Note topics and pricing and ordering information can be accessed at SocialWorkers.org/ldf.

LDF Web Page

Take advantage of the LDF Web page at SocialWorkers.org/ldf. Here you will find many useful resources such as an overview of HIPAA and guidelines for grants. The need for legal information among NASW members remains high, and the Legal Defense Fund is well positioned to serve members by expanding communication with members, all social workers, and the public.

Resources

National Association of Social Workers. (2009). *Social Work Speaks (8th ed.)*. Washington, DC: NASW Press.

BOOK REVIEW: CHILD CUSTODY EVALUATIONS BY SOCIAL WORKERS: UNDERSTANDING THE FIVE STAGES OF CUSTODY BY KEN LEWIS

Reviewer: Kamilah Omari, MSW, ACSW

Social work practitioners interested in expanding their areas of service to include providing child custody evaluations can use this text to understand the fundamental components, professional roles, and laws pertaining to child custody evaluations. Child custody evaluation requires the use of a “professional who makes recommendations to the court regarding the custody and/or visitation status of each parent in relation to the child” (NASW Legal Defense Fund, 2007). As an expert child custody evaluator and social work professor, Dr. Ken Lewis contends that clinical social workers with requisite training are competent child custody evaluators because of their understanding of family dynamics, child development, and therapeutic interventions.

Dr. Lewis’ book, *Child Custody Evaluations by Social Workers: Understanding the Five Stages of Custody*, “fills what was previously a void in the child welfare literature by defining the parameters of child custody and advocating the use of a stages model to conduct custody evaluations” (NASW Press). The text is written in an organized structure and pragmatic style, opening with an illustration of a generalized child custody evaluation process diagram, followed by a discussion of its components, categorized as

interviewing, observation, home study, and custody: statutory and case law. Dr. Lewis is careful to note the variance in child custody evaluation procedures by state jurisdiction and individual custody case. In the absence of mandatory national standards or guidelines, he emphasizes the critical importance of adhering to the applicable laws of the state where the evaluation is being conducted and applies the child custody evaluation model standards developed by the Ethics Committee of the NASW Oregon chapter for professional reference.

The central focus of the stages model of child custody developed by the author through his experiences as a child custody evaluator is introduced in a manner that makes practical application of the five stages to child custody cases obvious. *Marital discord, initial custody, visitation denial, custody modification, and child removal* are the dynamic, and often non linear, stages identified by Dr. Lewis. Information about each stage is arranged concisely by *definition and time frame, social work intervention, case examples, scope of social worker’s involvement, and scope of lawyer’s involvement.* The appendices provide information to identify cases where a social worker has been the child custody evaluator, a listing of the individual state’s rules

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and regulations as they pertain to child custody evaluation, and contact information for mental health professionals involved with conducting child custody evaluations.

Child Custody Evaluations by Social Workers can be a valuable and effective tool for social workers and private practitioners who work with children because of its specific focus on child welfare and the social work profession. The vast majority of literature available on this topic has been written for attorneys, psychologists, and other mental health professionals. A major strength of the text, aside from its pragmatic style, is its effectiveness in educating the reader on a multitude of scenarios when a social work role is appropriate or inappropriate for use in a child custody case. It also provides significant resources for one to begin the learning process on this topic. What is not abundantly clear in the text, however, is a cogent plan for social workers to follow for getting started in the child custody evaluation arena. Practitioners will also have to seek additional information to educate themselves in conducting research on case law, the adversarial nature of the legal process, special populations/cultural issues (e.g., same-sex parents, parents with disabilities, etc.), and state-specific functions of child custody evaluators.

In his private practice, Dr. Lewis offers basic workshops where social workers can learn a variety of practices and procedures pertinent to child custody law, including how to become listed with the clerk of the court, how to approach one's local bar association's family law section, how to rewrite résumés to be child-focused, and how to research relevant child custody case law.

For more information about *Child Custody Evaluations by Social Workers: Understanding the Five Stages of Custody* and other books published by the NASW Press, please visit NASWPress.org.

Kamilah Omari, MSW, ACSW, is a senior practice associate with the National Association of Social Workers National office. She can be contacted at komari@naswdc.org.

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A Dimension of Forensic Social Work: What Social Workers Need to Know About the Court System

As America has become a more litigious society, social workers have a need to be more knowledgeable about the various court systems (e.g., juvenile, mental health, family, and drug courts). The specialty of forensic social work calls for social workers to be involved in the mechanism of various court systems. This webinar will broaden social workers' knowledge of both forensic social work and the court system.

Friday, February 11, 2011

1:00 pm – 2:00 pm EST

Credit Hours: 1.0 CE

Presenter: Ira Neighbors, DSW

Moderator: Kamilah Omari, MSW, ACSW

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