

CHILDREN and FAMILY LAW CENTER



2012-13

The Children and Family Law Center at Washburn University School of Law prepares law students to provide high-quality legal representation for children and to advocate to improve the quality of justice for children and their families.

CFLC's Activities and Updates

FAMILY LAW CERTIFICATE

Since Washburn Law started offering the Family Law Certificate in 2003, 75 students have earned certification. Usually three to five students a year earn the certificate, but in both 2011 and 2012, there were nine students. Washburn Law has 11 dedicated family law courses, not counting the clinic experience. The family law courses continue to fill up.

Lynn Ward, '90, commented that she had hired two graduates who had earned the Family Law Certificate and that they were able to hit the ground running. Students who have earned the certificate are better prepared to start practice because of their depth of knowledge in family law.

STUDENT DIRECTORS

The 2012-13 student directors were Carly McPeak, Stephanie Randall, Chandler Maxon, Jeanette Fellows-Papak, and Cassie Zeigler. They updated the bulletin board, planned

Lunch & Learns, prepared pro bono opportunities, and updated the website.

CASA

The students continued Washburn Law's long-standing relationship with Court Appointed Special Advocates (CASA) and established other pro bono opportunities for students. On September 19, 2012, Joanna Penn explained the purposes of CASA and encouraged students to get trained.

LUNCH & LEARNS

- 9/19/2012: CASA presentation, Joanna Penn
- 10/17/2012: Questions and Answers About Divorce Practice, Michelle Miller, '01
- 11/7/2012: European Family Law, Andreas Hanke (see page 3)
- 1/16/2013: Foster Care
- 2/20/2013: Assisted Reproductive Technology, Rachael Pirner, a Wichita attorney and former president of the Kansas Bar Association

- 3/7/2013: Themes and Controversies in Understanding Islamic Law, Professor Raj Bhala, co-sponsored with Asian American Law Students Association and International Law Society
- 4/17/13: Pre-Nups and Co-Habitation Agreements
- 4/18/2013: Legal Volunteering in Social Justice, Public Interest, and Women and Children's Rights, co-sponsored with Nontraditional Student Organization

PHILANTHROPY

- Students, faculty, and staff filled 30 shoe boxes with toys, games, and books that were sent to needy children in the Philippines as part of the Christmas Shoebox Project.
- In February, the Children and Family Law Center raised money for the families of two Topeka police officers who were killed in the line of duty on December 16, 2012. They also collected canned goods for the Topeka Rescue Mission.

C F L C G U E S T S P E A K E R S



Joanna Penn



Michelle Miller, '01



Rachel Pirner

- At the Kansas Coalition Against Sexual and Domestic Violence fund raiser, student volunteers provided help to set up, host, and clean up at the event.

FAMILY LAW QUARTERLY

The *Family Law Quarterly* keeps the ABA Family Law Section in the national spotlight as the preeminent voice on marital and family law issues by providing an annual survey of cases and a review of the literature, as well as three issues with articles covering all aspects of family law.

The *Quarterly* continues to be a valuable resource for judges, lawyers, mental health professionals, court services personnel, law students, and the media. References to excerpts, can be found in every leading family law casebook. The Winter Law in 50 issue provides members with a quick and easy annual reference work that is often used by the media with the state-by-state charts that are updated by the student staff and checked by a lawyer in each state.

Ellen Grennier was the 2012-13 student editor-in-chief of *Family Law Quarterly* and Anna Jumpponen was a student executive research editor.

Kate Butler, '13, who was a former student director of the CFLC and earned the Family Law Certificate, won first place in the 2012-13 Schwab Memorial Essay Contest. Her article "Dramatic Leaps in the Right Direction: Protecting Physically Disabled Parents in Child Welfare Law" was published in the fall 2013 issue of the *Family Law Quarterly*. The American Bar Association Family Law Section hosts the annual national essay contest. Two other Washburn students placed in the contest, in 1992 and 2009.

AMICUS BRIEF

In 2010, the Children and Family Law Center submitted an amicus brief in a pending case involving parentage issues for a same sex couple. Then-Washburn student **Kimberley Streit, '11**, and two alumni, **Dr. Bud Dale, '09**, and **Lauren Douglass, '09**, helped with the brief. The case came

down in February 2013 – *Frazier v. Goudschaal*, 295 P.3d 542 (Kan. 2013). The Kansas Supreme Court noted:

Three amicus curiae briefs were filed in this case. One on behalf of the American Civil Liberties Union; one by Linda Henry Elrod; and one by the National Association of Social Workers (NASW). All three briefs were proffered in support of Frazier's claims.

The Elrod brief points us to *In re Guardianship of Williams*, 254 Kan. at 820–21, 869 P.2d 661, which held that courts may intervene to prevent harm to a child in extraordinary or unusual circumstances. Elrod contends that the use of ART necessarily creates extraordinary circumstances in parent and child relationships. Moreover, Elrod argues that enforcing ART agreements, such as the co-parenting agreement in connection with the artificial insemination in this case, protects children by providing clarity and predictability.

The brief also shares three theories that have been used by other states

to grant non-biological caretakers custody and parenting rights: (1) estoppel; (2) recognition of a parent-like status, whether labeled functional parent, psychological parent, or de facto parent; and (3) a finding that the person is a presumed parent under the applicable state parentage acts. The brief also points us to our decision in *In re K.M.H.*, 285 Kan. at 72–73, 169 P.3d 1025, where we found that, without a written agreement, a sperm donor has no standing to assert parental rights to the child born via artificial insemination. The CFLC also filed an amicus brief for the *K.M.H.* case.

The Supreme Court went on to hold that the co-parenting agreement could be enforced to the extent it served the children's best interests:

1. That a parent may waive their exclusive parental rights by entering into a co-parenting agreement.
2. Denying the children an opportunity to have two parents, the same as children of a traditional marriage, impinges upon the children's constitutional rights.

Creation of the 1973 Uniform Parentage Act (UPA), 9B U.L.A. 377 (2001), upon which our Kansas Parenting Act (KPA) is based, was

prompted in part by a series of United States Supreme Court cases that held that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution required that all children — both legitimate and illegitimate — be afforded equal treatment under the law.

Accordingly, the constitutional rights of the children, as well as those of the parents, must inform our determination of the validity of a co-parenting agreement. Here, the agreement effects equality by giving the children two parents. Moreover, the UPA and, in turn, the KPA, are gender neutral, so as to permit both parents to be of the same sex.

Guest Speakers Discuss International Topics



Andreas T. Hanke, a family law lawyer who is a partner in a Berlin, Germany, law firm was the practitioner in residence, November 4-8, 2012. He spoke at a Children and Family Law Center lunch about European Family Law and German Family Law. Hanke also spoke to the family law class about German legal education.



In the spring of 2012, the Center's practitioner in residence was Patricia Apy, internationally known family law attorney, who handles cases under the Hague Convention on the Civil Aspects of International Child Abduction.



In November, 2011, the Center hosted Dr. Fergus Ryan, law professor from Dublin Institute of Technology, as the Scholar in Residence. He talked to students and faculty, and met with lawyers and judges.

Some of Director Linda Elrod's Activities

- On July 20, 2012, Elrod presented "The Defense of Marriage Act: Where Are We Now?" to the 7th Annual Meeting of National Association of Appellate Court Attorneys in Washington, D.C.
- She was named to the Advisory Board for the *Ukrainian Law Journal's* "Law in the USA." In addition, three articles she wrote or coauthored were abstracted to be included in the inaugural volume
- On November 17, 2012, Elrod attended a meeting of the Uniform Law Commission's Joint Editorial Board for Family Law in Chicago, Ill.
- On November 18, 2012, she presented a CLE program entitled "International Jurisdictional Issues: Problems with Cross-Border Families" at the Appellate Judges Education Institute in New Orleans, La.
- Elrod spoke on NBC Today, "Kansas sues sperm donor for child support." In 2009, William Morotta donated sperm, free of charge, to a lesbian couple. Though Morotta signed a contract giving up financial responsibility for the child, the state of Kansas sued him for support after one of the mothers applied for financial assistance. Watch NBC's Michelle Franzen's report at <http://video.today.msnbc.msn.com/today/50352106>
- Elrod was also quoted in the *Washington Post* about the matter: <http://www.washingtonpost.com/national/health-science/>



Professor Linda Elrod and Professor Sandra Ferreira, University of South Africa, toured the Sydney Opera House.

kansas-sperm-donor-fighting-effort-by-the-state-to-make-him-pay-child-support/2013/01/02/df58a2aa-54c4-11e2-89de-76c1c54b1418_story.html

- Elrod's latest book is now in print. Harry Karuse, Linda Elrod, and Thomas Oldham, *Family Law: Cases, Comments and Questions* (7th ed. 2013).
- From January 31 to February 3, 2013, Elrod participated in the work of the drafting committee for amendments to the Uniform Child Custody Jurisdiction and Enforcement Act. The reason for the amendments is so the United States can ratify the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation, in Respect of Parental Responsibility and Measures for the Protection

of Children, which concluded on October 19, 1996 (Hague Protection of Children Convention).

- She continues to be considered as one of the best known international family law experts. Elrod was invited to the "Listening to Children's Voices" colloquium recognizing the 20th anniversary of New Zealand adopting the UN Convention on the Rights of the Child. The colloquium was held at the University of Auckland on March 25, 2013, in New Zealand. She spoke on "The UN Convention on the Rights of the Child's Mandate to Hear the Child's Voice and the Hague Abduction Convention."

She also participated in the Sixth World Congress on Family Law and Children's Rights, March 17-20, 2013, in Sydney, Australia. The theme was "Building Bridges: From

Workshop: Basic and Advanced Tools for Case Management

On August 16 and 17, 2012, the Children and Family Law Center and **Milfred “Bud” Dale, ’09, Ph.D.**, sponsored a two day training and workshop on case management. The first day covered the “basics” for those just beginning as case managers.

Tom Griswold, an Overland Park attorney, reviewed the law authorizing case management. Dale discussed “Due Process and the Kansas Cases on Case Management” and then outlined the basic procedures for case management. **Emily Hartz, ’01, Lawrence**, updated everyone on the case law that family case managers must know.

Ron Nelson, ’81, Lenexa, spoke to attorneys about representing clients who are involved in case management.

Sheri Keller, Shawnee County Court Services officer, explained the availability of online materials to help parents prepare for meaningful negotiation. **Lori Yockers, ’91**, spoke on “Understanding the Financial Dynamics of Contested Custody: Child Support and Parenting Plans.”

The second day covered more advanced topics. **Bob Brookens, ’78; Ron Nelson, ’81; Art Thompson,**



Ron Nelson, '81

Dispute Resolution coordinator for the Kansas State Office of Judicial Administration; and **Larry Rute, ’73**, talked about “Reforming the Kansas Case Management Statutes: Balancing Protection for All Involved with Constitutional Demands for Due Process.” Tom Griswold and Bud Dale presented on “Ethics for Case Managers: Understanding the Ethical Demands on All Professionals.” **Gary West, ’94**, with Kansas Coalition Against Sexual and Domestic Violence, talked about “The Problem of Domestic Violence and Case Management.”

Two district court judges, **The Honorable Kelly Ryan ’85, Overland Park**, and **The Honorable Jean Schmidt, ’82, Topeka**, offered the judicial perspective on case management.

Activities (continued from page 4)

Principle to Reality.” On March 18, 2013, she chaired the session “Enforcing International Financial Orders” featuring Ian Kennedy, former president of the International Academy of Matrimonial Lawyers. On March 19, 2013, she presented in a session “Hague Abduction Convention” on the topic “Hearing the Voice of the Child Who Objects to Return.”

At The Second International Family Law and Practice Conference: Parentage, Equality, and Gender, Elrod was a moderator for a plenary session on July 4, 2013.



Trynie Boezaart, University of Pretoria, South Africa; Professor Linda Elrod; Rachel Birnbaum, Associate Professor King’s University, Ontario, Canada; Professor Judy Cashmore, Associate Professor University of Sydney, Australia; Edith Croxen, Attorney, Pima County Office of Children’s Counsel, Arizona; Rebecca Stahl, Pima County, Arizona; and Sandra Ferreira, Associate Professor, University of South Africa, gathered at the University of Auckland, New Zealand on March 24, 2013.

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About Us

Washburn University School of Law's Children and Family Law Center prepares law students to provide high-quality legal representation for children and to advocate to improve the quality of justice for children and their families.

Students partner with faculty members, practicing lawyers, judges, social workers, and mental health professionals in an educational program designed to provide them with the knowledge and tools they will need to represent both child and adult clients successfully. In addition to the traditional classes, the Center offers students training in crucial skills such as counseling, negotiation, mediation, interdisciplinary research, and advocacy.

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