TESTIMONY ON HEARING #1 OF THE SPECIAL COMMITTEE – BY PAULA WERME, ESQ. (RETIRED)

THE BIGGER PICTURE – WHY THE SYSTEM IS DESIGNED TO BE CORRUPT

NH needs to make fundamental changes to how things are done with respect to the judiciary and Family Court divisions through structural changes to eliminate corruption. I apologize for the length of this testimony, but it fairly well explains why this needs to happen. First – a small detour:

Back in the 1990's, I researched, and advised a client that based on US Supreme court opinion, based on the case of Walker v. Birmingham, 388 U.S. 307 (1967), that she had a right to defy an unconstitutional statute – namely the prohibition on disclosing what happened in a DCYF hearing to a newspaper reporter based on her 1st amendment and Article 22 rights. It is now a matter of public record, so I'm not revealing a confidence here. The NH Supreme Court, in 2003, upheld a reprimand against me for giving her that advice – and stated that the statute needed to be challenged before the court before I could do that. I correctly advised my client on the law. The statute violated her 1st Amendment rights, which are fundamental rights. I had a right to offer a legal opinion on it. I'm a lawyer. That is what we are paid to do. Werme's Case, 150 N.H. 351 (2003) Werme's Case, was, and remains, in my opinion, a junk opinion – defying the US Supreme court's holding in Walker v. Birmingham, supra. I had every right to correctly advise my client on the holding of a US Supreme court opinion. The courts continue to violate 1st Amendment and Article 22 rights every day. There is a sign on every NH Court house door that one must ask permission to exercise their 1st amendment right in the court house. It is ridiculous. Gordon MacDonald ordered that, but it was signed by the clerk. If I recall correctly, I was the sole person who testified against his nomination to be Chief Justice. I sat on the phone for seven hours from about 500 miles away to do so for five minutes.

I did not realize it back when Werme's Case was going on, but I was a court whistleblower that far back in my early legal career. I am now openly and proudly calling myself that.

All I needed to do was to be the critical thinker I am, and work every single day very hard at legal research to find the correct law – and numerous cases I have found in the court pleadings of the judicial wrongdoing. I have about 20,000 scanned pages from auditing the court last year. I can show proof of the many illegal things judges are doing. something that I think I strived hard to do during the course of my career to be comply ethically with my duty to be competent - whether it was researching medical journals to defend a complicated petition under the child protection act or anything else. NH bar could benefit from more attorneys with my work ethic and commitment to competency – and they don't. They don't pay them enough.

I've basically spent the last 20 years since that Supreme Court of Werme's Case studying how and why the judicial branch – specifically what is now known as the Family Division - devolved into such ineptness and corruption. I found out a lot, but I found last year much more evidence my self-designed court audit. There are no standardized methods here. I had to think for myself. From dispensing with the rules of evidence – which remains a 14th A violation - to skipping their duty to write scheduling orders, to browbeating victims of domestic violence into continued contact with their abusers and extending the length of cases for years to make sure they comply. They could have relaxed the rules of evidence for pro se parties. Dispensing with them altogether for attorneys has done

significant damage and permitted actual child trafficking to child abusers – including child sexual abusers – right back to their abuser parents. More on that in coming testimony. Giving themselves the right to waive any court rule, including the rule against privileged information is against the rules of the court, the professional conduct code, the judicial conduct code of competence in the law, and the NH Constitution, Article 2-b. Contrary to what Judge Garner told a joint session of the judiciary and House and Family Law only a couple of weeks ago, I am aware of a case where a mother hasn't seen her tiny babies since August of 2022 because she won't sign a release for her psychological records over to her abusive husband's attorney – a release that the court ordered her to sign and where the attorney misrepresented on two releases that he represented HER and not her husband. I have drafted, but not yet submitted, the professional conduct complaints on that behavior because we believe there is more information in the hearing audios with respect to the attorney's misconduct. (Judicial, PCC, and Board of Mental Health)

I qualified for court appointment via asking DCYF to approve me – the opposition used to approve the attorneys who were permitted court appointments for years. Having kicked their tails in a couple of early medically complicated cases, they had no choice but to do so. Despite writing to the local courts to be asked to be placed on list of attorneys appointed attorneys, I was black balled my entire career – even from Ned Gordon – who I had a pretty high opinion of back when the legislature was investigating DCYF issues. I only got the rare appointments on motions filed at the request of my clients, who found me via the internet. Most of the work in my legal career was done pro bono - not a small portion – MOST of it. I had no entanglements with the judges such as doing their bidding to ensure more appointments to compromise my duty to my clients. Judges self-selecting the lawyers and witnesses in a case leads to corruption – and worse – bad lawyering, bad GAL work, and bad expert evaluators - because the defense attorney or other appointee has a loyalty to the judge for a living. Judges should not ever have the power to appoint their own choice of witness– Guardians ad Litem, Court appointed mental health practitioners, no one. Every licensed mental health professional is qualified in their respective fields – not the handful of evaluators whose living is made from court appointments and approved by the judicial counsel. I checked with the board of mental health. There are over 3000 licensed mental heath provider, not including psychiatrists, who are licensed at the Board of Medicine. Less than 20 names come up regularly in court pleadings as being appointed. That is a small group. An application for court appointment through the judicial counsel should only consider the logistics of payment, not add another layer of "qualification" by court insiders to practice at all, and they should be required to approve any provider upon application after a litigant choose that provider to do a court ordered evaluation. They have a license, so they qualify. I have not yet thoroughly investigate the Judicial Council – that is the subject of future research, should I be lucky enough to live long enough to do it.

The legislature has helped the judicial branch greatly in the judicial branch's quest to be unaccountable for their practices. From passing Article 73-A back in the day, thus depriving the other two branches from having ANY say in the checks and balances we all learned about in 4th grade - to permanently sealed files in Judicial Conduct committee, the Guardian ad Litem Board and the Board of Mental Health– to having a judicial council approve attorneys for court appointment in family law cases – requiring a higher level of "experience" (or is it "connectedness?") than passing the bar exam and recommendations. from three bar members to be able to "qualify" for court appointments – qualifications beyond membership in the bar. I don't get those recommendations in writing from other lawyers, even if they admire your work. I didn't want to ask for recommendations from anyone that I was even friendly with because I was a whistleblower practically from the start of my legal career.

They keep their club pretty small. The few who repeatedly benefit from court appointments make a great deal of money doing so – often by offering opinions they are unqualified to offer – such that mother is coaching a child to disclose abuse from a GAL. Judges being permitted the leeway to choose their own witnesses, opposing counsel, court appointed evaluators and their practice of not following the law has led us so far directly led to the death of Joshua Savyon - dead because Judge Kinghorn ordered supervised visitation after a direct threat to kill him by his father, and ordered this in a Domestic Violence case – not a custody case. I was told by the AOC that there was no custody case. The parenting plan was referenced on the DV case summary, so someone is making sure it isn't available publicly through the Administrative Office of the Courts. They told me there was no associated custody file, despite the fact that the file was referenced in in the DV case summary. The child is dead - how much more information do you need that the judicial system is hiding their own misdeeds?

I've heard story after story from people whose attorneys advised them to sign a consent decree with a finding or gave them terrible legal advice because they didn't want to educate themselves about a particular issue to put on a real defense. My very first child protection client – DCYF snagged the only expert witness in the state of NH – there was none to be found, and we knew full well that the court would not approve an out of state expert – a physician was needed. At the level of waiting for the trial de novo in the Superior Court, I found myself driving to NYC to the Hospital for Special Surgery with my client and child to get a medical opinion and record to refute DCYF's expert witness. It worked. That trip was pro bono. DCYF packed up their toys and went home, but only after I negotiated that they also take her name out of the central registry – it never went to the de novo trial requested in the Superior Court. DCYF just dropped the case. They violated their agreement and did NOT take her name off the central registry until we discovered it years later. The state doesn't pay court appointed attorneys nearly enough to be competent, do the legal research, and put on a real defense in child protection cases. You have to be dedicated. Some cases can be very expensive to defend – the medically complicated ones where there are medical explanations for injury to a child, for instance. The parents don't get that. The lawyers don't research it themselves enough to cross examine DCYF's choice of expert witness.

The Family Division's choices have devolved over the years into pretty much a handful of so called experts being appointed, the judges don't mind having the people drive half way across the state to see their choice of expert. I know of a case out of Jaffrey, where the judge had no compunction about choosing Ben Garber to do an eval out of Nashua. People are ordered to drive from seacoast to the lakes region for psychological evals, or to Concord. It's ridiculous. Two days after a Judge Pendleton ordered a person to drive from CT to Concord for an evaluation, the psychologist signed an agreement to voluntarily give up her license to practice. The underlying facts are under seal at the Board of Mental Health. We think it is very likely that she engaged in the unethical (for a psychologist) behavior of diagnosing "parental alienation," or for engaging in "reunification therapy" to treat the junk diagnosis of parental alienation. But her misconduct is under seal. Just last week, I found possible (not entirely clear) evidence that a psychologist with a lapsed license is being court appointed for psychological evaluations. She has right last name and is from the town where the judge appoints this evaluator, but there is another psychologist with her last name in the state. I also have to verify when her license lapsed via the Board of Mental Health.

The judicial branch has taken full advantage – from just dispensing with 14th A rights via dispensing with the Rules of Evidence to exempting themselves from the Right to Know statute that, to

refusal to answer letters requesting information under Article 8 and writing unconstitutional orders for litigants to waive their privileged medical and psychiatric information – The RTK statute has no exemption built in for the judiciary. Apparently, they don't consider themselves to be bound by RSA 91-A since they aren't named as a governmental body in the RSA 91-A, but consider themselves to have the right to keep private the exceptions to records available to the public as described in RSA 91-A. They keep entire classes of court file from the public, when the information contained in them is a fundamental 1st A right to see them, and the constitutional test for restricting fundamental rights restrictions is "strict scrutiny." They could accomplish their purpose with far less restrictive means, such as prohibiting the publication of the name of a child in a child protection proceeding. There is no laundry list of exceptions to public information under Article 8 – just the phrase "unreasonably restricted." In addition, the passage of RSA 490-D:3, which statutorily gives the Family Division and Circuit court the constitutionally prohibited power to be a court with the vast powers of equity in the absence of constitutional authority. That is the unconstitutional statute they use to ignore the law and do anything they want. They don't have to follow the statutory laws because you fine folks handed them the power to ignore the law.

Next week I will submit much more specific evidence of judges breaking the law right through throughout the system – the GAL's court appointed therapists, to hiding judicial misconduct reports that should rightly be subject to the constitutional right to know under Article 8, etc. The judiciary makes its own rules the vast power you gave them to evade legislative or executive branch oversight under Article 73-a. It's designed to be corrupt, and it's designed so that you folks can't write statutes to fix it. They ask you to approve unnecessary statutes to hide their conduct – such as sealed juvenile records. That could be fixed by making is criminal to disclose the name of an abused child publicly by the press, just as they do for rape victims. It has worked in Minnesota for decades. That would comply with their constitutional duty to have government, open, accessible, accountable and responsive to the people They hide much of what they do, from improperly sealing entire divorce cases for politically connected people in violation of the Petition of Keene Sentinel, 136 N.H. 121 (1992) to keeping the legislature in the dark about the entire juvenile docket. You know only what they want you to know. The specifics will submitted in the coming weeks, with names (of judges) and docket numbers, and copies of court orders as necessary. Because I now know.

Let's take on the topic for a short minute of "marital masters" – the old term – and "referees" – the new term. The judicial branch argues that they are not judicial officers because they they don't sign orders, they make recommendations. The clearly perform judicial duties, however – they sit and listen to evidence and write the orders the judge signs off on. Does the judicial branch really want to expose themselves to the liability of having non-judicial officers – their own claim - and if they claim it, they are not subject to judicial immunity – performing judicial functions – sitting and doing judicial functions - without judicial immunity? They don't think things through very well, in my opinion. The idea has been bad from the start. NH has a tremendous potential liability from having non-judicial officers performing judicial functions. While I disagree with full judicial immunity, and laws are starting to show up across the US via statute and case law that makes that immunity easier to pierce, it remains the law in NH. It is most definitely an immunity easily pierced in NH on account of the fact that the judicial branch claims these folks are not "judicial officers."

I am the stick here – chastising the courts for their illegal behavior. I am also handing you your unexpected carrot – from the feds. There are financial incentives now written in Violence Against Women Act to better protect children in the context of custody cases. Please take advantage of them

and pass everything recommended. And make sure if the court appoints "experts" to write a psychological report in a case where domestic violence or abuse is alleged, that they are forced to come to the court and make themselves available for cross-examination on their qualifications and their report. My specific statutory recommendations will be submitted for a future hearing of this committee.

Finally, the cover-up of judicial misconduct and unethical behavior extends a bit past the government. From the CASA web site, I discovered that Amy Covino of WMUR, who I was told by a WMUR employee, was the family law reporter there, sits as an advisor to CASA. I was told she was on the board. Perhaps she once was. I don't have access to that information. I looked up the reporter ethics, and she is in violation of those standards just by being a citizen advisor – too close to a family court involved entity. In order to puff their own credibility and stature in the state, apparently CASA seeks out locally famous people to affiliate themselves with. My opinion of their competence and value in child protection matters is quite a bit lower than theirs. At any rate, you can safely assume Covino won't be showing up in these hearings to report on problems in the Family Division. To my knowledge, she never has.

CASA also has a seat at the table on the judicial counsel, via Marcia Sink – the only head of CASA since I have been practicing law. In my legal career, I was good enough that an appearance in the court room and via pleadings from the CASA attorney was a regular occurrence, although I have long forgotten the details. I believe that Sink's participation in the judicial council is statutorily authorized. THAT is also unethical – sitting on the board of those who are approved to litigate against you. Ditto for David King's statutorily authorized participation and Robert Lynn's statutorily authorized participation, and Heather Culp – one Circuit Court Administrator. They are court insiders authorized to approve participation of those that would go against state. They approve or disapprove of of their own opposition that are able to be court appointed. That doesn't lead to quality defense in family law matters. It's too small of a small crowd. Court appointed lawyers have a loyalty to the judge for their income that interferes with their ethical duties to their clients. I know of one example that is privileged information, and I know for a fact she would never waive that privilege, so I didn't ask. What that lawyer did to my former client was despicable. And there was no statutory authorization for her to be in appointed by the court. She doesn't know it yet, but because she was illegally appointed using powers the court did not have under the constitution, she also has no immunity for her actions. She will eventually find out.

Finally, I bring up Joshua Savyon – the little boy that is dead. I enclosing for your review the Case Summary from the Domestic Violence case. Newspaper reports from the time after this death referenced a lengthy custody battle. While you can see that the judge permitted them to litigate custody under the DV statute, even going to far as appoint a guardian ad litem after Muni Savyon made a direct threat toward his son, the case summary also references an existing parent plan. See order dated 3/30/12 Index 3 on the case summary. The case summary references the parenting case. When I tell you that the judicial system is hiding information from the public, I am serious. When I requested this docket summary last year, I was told there was no parenting case in the system. When I checked it again this week, I saw this notation. I called the AOC again yesterday, the employee at the office was just as confused as I was about why it was gone from the system. The court clerk cannot pull the custody case for me to inspect it without a docket number. They don't even know what court it it is in, although I suspect it is in Merrimack Circuit Court. Someone authorized taking that case out of the

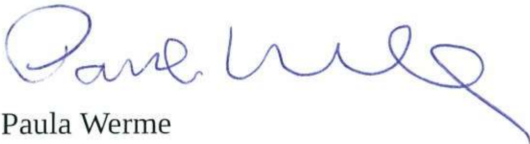
Odyssey case management system. My guess is that it is someone who is or was, high up in the Administrative Office of the Courts. Those actions are likely criminal under RSA 643:1:

643:1 Official Oppression. – A public servant, as defined in RSA 640:2, II, is guilty of a misdemeanor if, with a purpose to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office; or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

Source. 1971, 518:1, eff. Nov. 1, 1973.

This committee needs to come out with recommendations that change the structural method whereby they call the Judicial Council, the NH Bar, the judiciary, CASA, the GAL structure, and even the NH Coalition Against Domestic and Sexual Violence. The Coalition feeds the hapless victims of domestic violence to the courts, and the courts perpetuate that violence sometimes for years on end in custody matters. The Coalition literally take millions from the feds and the state to perpetuate domestic violence via the courts that refuse to protect women. Their very existence depends on NOT fixing the problems. The usual "stake holders" are not stake holders, and the legislative practice of consulting them on such in fashioning legislation is not helping the situation. The real stake holders are the citizens of NH. Those citizens don't have the expertise to explain their due process violations to this committee in five minutes or less. I am the only witness here who has the expertise to explain it to you that doesn't have a financial interest in the well-more-than-an-oiled-cottage-industry known as the Family Division and all the for-profit and not for profit entities associated with them, and dependent on them for income. I include CASA in that because they also get funding from the state and the federal governments to exist.

Respectfully submitted,



Paula Werme

List of attachments:

Emerson v. Town of Stratford – court case that interpreted the NH Constitution as limiting broad equitable powers of judges in statutorily created courts to the doors of the court room in which they sat.

RSA 490 – statutorily giving the statutorily created Circuit Court broad equitable powers they don't have under the constitution

Web page on Werme's Case – created many years ago by me – It hasn't been touched since the early 2000's.

Picture of sign on the front door of every court in the state that you must ask the judge's permission to exercise 1st A rights

McDonald / Clerk Order about Recording in the Court House (note: could not be downloaded, but copied and pasted.) Format different than on NH Supreme Court web site.)

Right to Know to Ribsam dated 09/23/22 – entirely unanswered. – Second one

Right to Know to Judge King 05/09/2019 – reply withheld for "personnel information" – resent after Laurie List decision – can't find the file – THAT one was ignored. I sought information on judicial training materials and wanted to know who trained them. Although not specified, I wanted to know who was training them in the junk science of parental alienation. This was the second one after Laurie Decision came out – IGNORED

Sanders Study – first page – I think I have the whole thing. Will resubmit another week when I find it.

From 2008 publication from the National Council of Juvenile and Family Court Judges, written shortly after Judge Sue Carbon was whatever they call the chair of it stepped down. Pages 1-12 on the range of abusive behaviors judges need to take into consideration in fashioning orders for custody that protect child and on striking from the record any allegations of parental alienation because it is junk science. In due time, a few other peer reviewed studies will be submitted.

Muni Savyon's (Respondent) and Joshua Savyon's DV case summary – referencing a custody matter the Administrative Office of the Courts claimed did not exist. Joshua Savyon was murdered in 2013 by Muni Savyon at the Manchester YMCA – ending up with a decline of supervised visitation centers that persists to this day. It's a high risk endeavor to go into that business.

Stat~~ement of Paula Werme on sealed divorce cases she discovered and what the google search~~ revealed.

Roughly outlined from the internet - Kayden's Law provisions under VAWA. Someone in state government ought to know how to access federal funds. I don't. You don't get these federal funds until and unless you make some statutory changes, however. You can safely assume that the changes outlined in the federal law that the feds will pay states for are strongly recommended whether or not I remember to incorporate them in my other future recommendations.

Emerson v. Town of Stratford

139 N.H. 629 (N.H. 1995) · 660 A.2d 1118
Decided Jun 14, 1995

No. 94-014

Decided June 14, 1995

1. Costs — Recovery of Costs and Attorney Fees — Generally The monetary relief awarded by the district court for the prevailing party's time, mileage, postage, and photocopies did not come under any of the cost provisions provided by District and Municipal Court Rule 3.23. DIST. MUN. CT. R. 3.23.

2. Courts — District Court — Power

630 *630

3. Courts — District Court — Power

4. Attorneys — Fees — Recovery

pro se

Jon Emerson and *Lynette Emerson*, on the brief, and *Mr. Emerson* orally, *pro se. Nighswander, Martin Mitchell, P.A.*, of Laconia *(Timothy Bates* on the brief and orally), for the defendants.

HORTON, J.

The defendants, the Town of Stratford and its selectmen, Ronald Scott, Gary Paquette, and Thurman Blodgett, appeal an order of the Colebrook District Court *(Miller*, J.) awarding costs to the plaintiffs, Jon and Lynette Emerson, in their action to compel the defendants to issue them renewal pistol permits. The defendants argue that: (1) the district court award is not authorized by statute or court rule; (2) the district court lacks the power to award the equivalent of attorney's fees; and (3) an award of attorney's fees is not justified by their actions. We vacate the court's award of costs and remand for a determination of whether an award of sanctions is appropriate.

The town denied the plaintiffs' applications to renew their pistol permits on the stated ground that there was a problem with a reference on their applications. Ronald Scott, a town selectman, had contacted a reference listed by both of the plaintiffs on their applications and determined that the plaintiffs had not been given permission to use that person as a reference and that he did not wish to be used as a reference. The plaintiffs appealed to the Colebrook District Court, arguing that they were entitled to a renewal and that the defendants denied their permits in bad faith. *See* RSA 159:6-c (1994). As part of the petition, the plaintiffs asked for "damages" for court costs, litigation costs, other expenses, and other damages. The district court ordered the town to issue renewal permits to the plaintiffs and awarded the plaintiffs costs in the sum of $807.99 for mileage, photocopies, postage, and compensation for their time spent researching, writing, making copies, and preparing for court. The defendants appeal the monetary award only.

[1] Court rules prescribe the manner in which the district court may award costs. DIST. MUN. CT. R. 3.23. Although District and Municipal Court Rule 1.8 (F) permits the award of "reasonable costs, including reasonable attorney's fees, against any party whose frivolous or unreasonable conduct makes necessary the filing of or hearing on any motion," the plain language of the rule limits its application to conduct by the opposing

631 party resulting in the filing of *631 or a hearing on a motion. Therefore, it has no bearing on whether a prevailing party in civil litigation may be awarded costs or attorney's fees. That the plaintiff filed a motion for costs and fees associated with litigating the underlying claim does not bring this case within the scope of Rule 1.8 (F). The "costs" allowable to the prevailing party include "[flees of the Clerk, fees for service of process, witness fees, expense of view, cost of transcripts, and such other costs as may be provided by law." DIST. MUN. CT. R. 3.23 (C). The monetary relief awarded by the district court for the plaintiffs' time, mileage, postage, and photocopies does not come under any of the cost provisions provided by the rule. Therefore, we vacate the award of costs.

The plaintiffs' request for "damages" and the court's award of "costs" are in the nature of a request for and an award of sanctions. *See Daigle v. City of Portsmouth*, 131 N.H. 319, 329, 553 A.2d 291, 297 (1988) (court may consider attorney's fees in determination of appropriate sanctions). The defendants argue that the district court lacks the power to award sanctions, such as attorney's fees, and therefore the district court had no power to award the "costs" to the plaintiffs. We disagree.

[2, 3] Even though the district court is not a constitutional court and does not have a general grant of equitable power, *see Keenan v. Fearon*, 130 N.H. 494, 502, 543 A.2d 1379, 1383-84 (1988) (power to award sanctions "rests . . . on the essential judicial power to get the judicial job done once and for all . . . [and] the power subsumed under equity jurisdiction to compensate a party for his [or her] opponent's unreasonableness in prolonging unnecessary litigation"), it does have the limited inherent equitable power to impose sanctions, such as attorney's fees. The power is not dependent on a specific statutory grant. The inherent power to impose sanctions stems from a court's necessary power to control the proceedings before it. "[W]hen overriding considerations so indicate, the award of fees lies within the power of the court, and is an appropriate tool in the court's arsenal to do justice and vindicate rights." *Harkeem v. Adams*, 117 N.H. 687, 690, 377 A.2d 617, 619 (1977). "The power of the judiciary to control its own proceedings, the conduct of participants, the actions of officers of the court and the environment of the court is a power absolutely necessary for a court to function effectively and do its job of administering justice." *State v. LaFrance*, 124 N.H. 171, 179-80, 471 A.2d 340, 311-45 (1983) (referring to superior court).

We have previously recognized other inherent powers of the district court. In *State v. Martina*, 135 N.H. 111, 600 A.2d 132 (1991), we held that even without statutory authority the district court had inherent subject matter jurisdiction to punish for criminal contempt because such power was necessary to "ensure that justice is administered both fairly and efficiently." *Id.* at 117, 600 A.2d at 136. The same principles apply here. The power to award sanctions is inherent in the power necessary 632 to control *632 the courtroom. We therefore hold that the district court has the power to award appropriate sanctions, including attorney's fees, and remand to the district court for a determination of whether sanctions are appropriate in this case.

The defendants' final argument is that an award of sanctions is not justified by their actions in this case. Because we are vacating the award of costs and remanding for a determination of whether sanctions are appropriate, we do not address the defendants' final argument.

On remand, the district court should keep in mind our standards for awarding sanctions. Although the sanction cases decided by this court have been directed to the award of attorney's fees, they are instructive on the issue of awarding any sanction. Ordinarily the prevailing litigant is not entitled to collect attorney's fees from the losing party. *Harkeem v. Adams*, 117 N.H. at 690, 377 A.2d at 619. An award of attorney's fees is appropriate,

however, where a party has acted "in bad faith, vexatiously, wantonly, or for oppressive reasons, where the litigant's conduct can be characterized as unreasonably obdurate or obstinate, and where it should have been unnecessary for the successful party to have brought the action." *Id.* at 691, 377 A.2d at 619 (citations and quotation omitted). "Attorney's fees may be awarded as compensation . . . for those who are forced to litigate against an opponent whose position is patently unreasonable." *Maguire v. Merrimack Mut. Ins. Co.*, 133 N.H. 51, 55, 573 A.2d 451, 453 (1990) (quotation omitted). Because the trial court is "in the best position to decide whether a party's claim constitutes bad faith or is patently unreasonable," *id.* at 55-56, 573 A.2d at 454, its decision to award attorney's fees will stand absent an abuse of discretion. *Id.* **[4]** This case also compels us to address the issue of whether a court may award the sanction of attorney's fees to a *pro se* litigant who does not incur any obligation to pay for an attorney. We are now prepared to join the majority of jurisdictions that have answered the question in the negative. *See, e.g., Kay v. Ehrler*, 111 S. Ct. 1435, 1436 (1991) *("[P]ro se* litigant who is *not* a lawyer is *not* entitled to attorney's fees [under 42 U.S.C. § 1988]."); *Donahue v. Thomas*, 618 A.2d 601, 607 (D.C. 1992) (attorney-client relationship prerequisite to award of attorney's fees under D.C. Freedom of Information Act); *Gates v. City of Tenakee Springs*, 822 P.2d 455, 463 (Alaska 1991) ("Lay *pro se* litigants cannot recover attorney's fees."); *Beasley v. Peters*, 870 S.W.2d 191, 196 (Tex.Ct.App. 1994) (sanction of attorney's fees to attorney appearing *pro se* not appropriate). Therefore, any award of sanctions may not include compensation for the plaintiffs' time spent researching, writing, making copies, and preparing for court.

The district court's award of costs exceeds its authority, as stated in District and Municipal Court 633 Rule 3.23 (C). We vacate the award of costs *633 and remand for an award of costs consistent with Rule 3.23 (C). In addition to costs, the district court may impose sanctions, if appropriate, for out-of-pocket expenses associated with the litigation in district court, noting that the court must state on the record its grounds for imposing sanctions. Items that are awarded as costs may not be duplicated as sanctions.

Vacated and remanded.

All concurred.

casetext

490-D:3 Equity Jurisdiction. –

Notwithstanding any law to the contrary, the judicial branch family division shall have the powers of a court of equity in cases where subject matter jurisdiction lies with the judicial branch family division. Suits in equity where subject matter jurisdiction lies with the judicial branch family division including, but not limited to, petitions for divorce, nullity of marriage, alimony, custody of children, support, and other similar proceedings may be heard upon oral testimony or depositions, or both, or when both parties consent, or service having been made and a notice of the time and place of the hearing having been given, when both parties appear. Such suits may be heard by any justice of the judicial branch family division at any time, but nothing contained in this section shall be construed as limiting the power of the judicial branch family division to have issues of fact framed and tried by a jury, according to the rules in equity, or the course of such proceedings at common law.Source. 2005, 177:14, eff. July 1, 2005.

The Matter of A Professional Conduct Complaint Against Paula J. Werme, Esquire

a/k/a "Werme's Case"

New Hampshire state law makes it illegal for anyone to talk publically about what goes on in a DCYF abuse/neglect hearing. The rationale for the law is to protect families, and especially the children, from disclosure of embarrassing facts and accusations. From RSA § 169-C:25:

> II. It shall be unlawful for any party present during a child abuse or neglect hearing to disclose any information concerning the hearing without the prior permission of the court. Any person who knowingly violates this provision shall be guilty of a misdemeanor.

On the other hand, Article 22, Part 1 of the NH Constitution says:

> Free speech and liberty of the press are essential to the security of freedom in a state. They ought, therefore, to be inviolably preserved.

Finally, the US Supreme Court has stated,

> "The right to defy an unconstitutional statute is basic in our scheme. Even when an ordinance requires a permit to make a speech, to deliver a sermon, to picket, to parade, or to assemble, it need not be honored when it is invalid on its face."

Walker v. Birmingham, 388 U.S. 307 (1967)

During the summer of 1999, a newspaper reported on the plight of one mother and her attempt to get a child returned from foster care. While the article does discuss the content of the hearings, it is not clear if that information came from the mother or from me. What is not clear from the pleadings and information is that we (I) gave the reporter two boxes of files - medical files, court files, police interviews, and third party records - all specifically excluded from the definition of "record" that's illegal to disclose under RSA 170-G:8-a, and none of which is the subject of the Supreme Court opinion so far as I can tell. It was the subject of the original complaint. (It was illegal under RSA 170-G:8-a to give him the DCYF records, and we did not do so.)

This Supreme Court professional conduct opinion is about *one sentence* of the newspaper article that discusses *one statement* made in the trial. The entire balance of the approximately

3000 word article was from conversations and materials legally supplied to the reporter concerning DCYF, Police, and doctor activities. Neither the Professional Conduct Committee and the NH Supreme Court ever attempted to deny the the fact that the statute's broad exclusions render it incapable of meeting even the rational basis test for constitutionality. Indeed, the Supreme Court stated that the constitutionality is immaterial. It helps to remember all of this as you read the balance of this page.

While the DCYF attorney tried, unsuccessfully, to get county and state attorneys to file charges against me, the presiding judge of the appellate hearing tried a different tack and filed a request with the state's Professional Conduct Committee to sanction me for violating 169-C. While I welcomed a chance to show that 169-C is unconstitutional in court, (the misdemeanor penalty would make the trial public), the PCC investigations can be made public at the target's request and concurrence of the PCC. They did not concur, citing 169-C:25. The Supreme Court ruled that that the file complaint was to be made public, except for only those portions covered by 169-C:25. Furthermore, the hearings are to be public.

All this will be a long and confusing process. Until it is resolved, I will limit my comments mostly to explaining and summarizing the documents involved. In order to help make sense of the following, here are the chronology and contents of the paper trail to date:

- 1999 Jun 24: The complaint filed by Judge Smukler.
- 1999 Jul 19: The notice to me about docketing the complaint.
- 1999 Jul 25: My reply to the PCC.
- 1999 Sep 8: The PCC's request for a Special Matters Confidential docket number.
- 1999 Sep 9: My response presenting my case to make the complaint public.
- 1999 Oct 4: A letter from Atty. Thomas Hanna introducing himself and saying he was assigned to investigate.
- 1999 Dec 27: The NH Supreme Court ruling making the complaint public.
- 2000 Nov 3: My letter to Judge Kelly telling him my understanding of the law.
- 2001 Aug 8: Electronic mail to Thomas Hanna telling him to get moving.
- 2001 Aug 20: A reply from Atty. Hanna promising to elevate this matter above others of "equal urgency."
- 2002 Feb 8: Another letter to Thomas Hanna, to remind him I'm still waiting.
- 2002 May 22: A grievance filed with the Judicial Conduct Commission against Thomas Hanna.
- 2002 Jun 18: The JCC reply concluding that PCC members are not subject to the Code of Judicial Conduct.
- 2002 Jul 22: The charges.

- 2002 Aug 21: A letter clarifying my claim that people have the right to violate unconstitutional law.
- 2002 Oct 17: The PCC has reached a decision and I'm reprimanded, but I'll appeal.
- 2002 Nov 16: The appeal, which goes to the NH Supreme Court.
- 2002 Dec 20: Oops - I miscalculated the due date for the appeal and was one day late.
- 2003 May 1: The Supreme court appeal.
- 2002 Oct 27 (out of sequence): Ken Starr offers two words of advice and support.

This is the Professional Conduct Complaint as redacted by the PCC. Links are to some of the rules and laws referenced in the complaint.

James L. DeHart, Esq.
Committee on Professional Conduct
Suite 304
4 Park Street
Concord, NH 03301

Re: Attorney Paula Werme

Dear Mr. DeHart:

Enclosed please find a copy of my order of June 24, 1999 in [Case Name Redacted], Merrimack County Docket # [Redacted] and a copy of a newspaper article referred to in that order.

Because Attorney Werme's possible participation in the process of disclosure to the newspaper of certain confidential information may implicate the Rules of Professional Conduct, see e.g. Professional Conduct Rules 1.2(d) and 8.4, I am sending these documents to you in conformity with my obligation under Supreme Court Rule 38, Canon 3B(3)(b), for whatever action the Committee deems appropriate. I am also sending a courtesy copy of this letter and the enclosures to Ms. Werme.

Sincerely,

Larry M. Smukler
Associated Justice

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

In the Matter of [Name Redacted]

No [Docket # Redacted]

Order

This is a child abuse proceeding brought under RSA 169-C:1, et seq. Before the Court is the Motion of the Court Appointed Special Advocate (CASA) for show cause hearing. The petitioner *[DCYF]* filed a concurrence to the CASA's Motion. Additionally, through [child's name redacted] through her attorney filed a motion for further orders re: confidentiality of juvenile proceedings pursuant to N.H. RSA 169-C:25 (II).

The CASA's motion, the petitioner's concurrence and the child all represent that the Sunday Monitor ran a headline story that indicates that confidential information about this proceeding was disclosed to the Monitor by the Respondent, [Respondent's Name Redacted], and her attorney, Paula Werme. Additionally, the child, through her attorney, represents that the disclosure of confidential information had an adverse effect upon her. See Motion for Further Orders at 2, ¶ 8. Citing RSA 169-C:25, CASA, the petitioner and the child request this Court to schedule a hearing at which the respondent and her attorney shall be required to show cause why sanctions should not be imposed.

RSA 169-C:25, II provides:

> It shall be unlawful for any party present during a child abuse or neglect hearing to disclose any information concerning the hearing without the prior permission of the court. Any person who knowingly violates this provision shall be guilty of a misdemeanor.

This statute, cited by the CASA, the petitioner and the child, establishes the sanction to be imposed - criminal liability. The Court cannot initiate this sanction; rather an appropriate prosecutorial arm of the State of New Hampshire must initiate it. In this context, a show cause hearing is not necessary.

Based on the foregoing, the Court rules as follows:

1. The Court finds that the CASA, the petitioner and the child are correct in their representation that neither the respondent nor her attorney sought or obtained the prior permission of the Court for the disclosure of confidential information.

Note, here Judge Smukler appears to be interpreting the statute to require Court permission to divulge any confidential information concerning the case. This is not required. RSA 170-G:8-a concerns most records of child abuse proceedings, and specifically exempts even Court pleadings and orders from the statute. RSA 169-C:25 only refers to HEARING contents.

2. A copy of this order and the Newspaper article shall be forwarded to the Merrimack County Attorney for investigation and thereafter, for whatever action he deems appropriate in the exercise of his prosecutorial discretion.

   The Merrimack County Prosecutor declined to take any action, and forwarded the complaint to Mark Zuckerman of the NH AG's office.

3. The parties are ordered to adhere to the confidentiality requirements of RSA 169-C:25. Accordingly, the parties are placed on notice that a violation of this order may constitute contempt of Court.

   An interesting paragraph, now that the Professional Conduct Committee has made ***this*** *order public. Could I be held in contempt for releasing what the Supreme Court ordered released according to my request?*

4. To the extent that the CASA, the petition or the child seek additional sanctions that this Court may have the inherent authority to impose, they shall file pleadings specifying their requests no later than July 7, 1999. If such additional pleadings are filed, the respondent and her attorney will be provided an opportunity to respond in due course. The Court will then make a determination as to whether the matter will be addressed in the course of the hearing already scheduled for July 27, 1999.

This is the letter from the PCC to me formally notifying me of the complaint and describing the process.

July 19, 1999

Paula J. Werme, Esquire
83 North Main Street
Boscawen, NH 03303

Re: Werme, Paula J. advs. Professional Conduct Committee # 99-072

Dear Ms. Werme

The Committee on Professional Conduct has docketed this Committee generated complaint against you based upon the content of the enclosed documents:

1. Letter dated June 24, 1999 from Associate Justice Larry M. Smukler to James L. DeHart.

2. Order of the Merrimack County Superior Court dated June 24, 1999 In the Matter of [Child's Name Redacted], Merrimack County Superior Court No. [Docket Number Redacted].

3. Photocopy of the Newspaper Article Appearing in the Concord Monitor of June 13, 1999.

More specifically, the Committee calls your attention to allegations made by Judge Smuckler that your possible participation in the process of disclosure to the newspaper of certain confidential information may implicate certain Rules of Professional Conduct.

Involved in this complaint are questions under the Rules of Professional Conduct, in particular, but not limited to Rules 1.2(d), 8.4(a) and 8.4 (b). More specifically questions are raised as to whether you participated in the disclosure of confidential information to the Concord Monitor; whether by doing so you committed criminal acts or assisted your client in committing criminal acts; and because of the aforesaid conduct committed acts that are in violation of the Rules of Professional Conduct.

You are required to submit an original and two copies of your reply within 20 days of the date of this letter to Robert C. Varney, Vice-Chairperson, c/o James L. DeHart, Administrator, with a third copy to Robert C. Varney. See § 2.3(b) of the Committee's Rules and Procedures.

IT IS EXPECTED THAT YOU WILL PROMPTLY RESPOND TO THE REQUESTS OF THE COMMITTEE. THE FAILURE TO COOPERATE WITH A DISCIPLINARY COMMITTEE COULD RESULT IN THE SCHEDULING OF A PUBLIC HEARING AND IN A FINDING THAT THE RULES OF PROFESSIONAL CONDUCT HAVE BEEN VIOLATED. RULE 8.1(B).

Following receipt of your reply, the Committee will take any further action it deems appropriate.

Please be advised that all matters relating to complaints submitted to this Committee, and any action taken by this Committee shall be confidential, unless otherwise provided by the Rules of the Supreme Court 37(17).

Pursuant to NH Supreme Court Rule 37(18), enclosed is a complete copy of Rule 37 as well as a copy of the Rules and Procedures of the Professional Conduct Committee.

Sincerely,

James L. DeHart
Administrator

Per the process, here is my reply to the complaint.

July 25, 1999

Robert C. Varney, Vice-Chairperson
c/o James L. DeHart, Administrator
Professional Conduct Committee
4 Park Street, Suite 304
Concord, NH 03301

Re: Professional Conduct Complaint of Judge Smukler

Dear Mr. Varney,

I am in receipt of the letter of the Professional Conduct Committee dated July 19 requesting a reply to Judge Smukler's allegations. As you know, the statute complained of as possibly being violated was RSA 169-C:25, II, which provides that:

> "It shall be unlawful for any party present during a child abuse or neglect hearing to disclose any information concerning that hearing without the prior permission of the Court. Any person who knowingly violates this provision shall be guilty of a misdemeanor."

As Judge Smukler indicated, the sanction for violation of the statute is criminal liability. To my knowledge, no one has ever been prosecuted in this state for violation of this statute, and as of this date, I am unaware that either myself or my client has been charged with its violation. I advise all of my child abuse or neglect clients that the statute, as applied to them, infringes their fundamental rights to political speech under the United States Constitution, Amendment I, and the New Hampshire Constitution, Article 22, Part I. As you know, Article 22 states:

> "Free speech and liberty of the press are essential to the security of freedom in a state. They ought, therefore, to be inviolably preserved."

I can only reconcile the statute with the constitution in one way. Inviolable means exactly what it says, and my clients' conduct is protected. Since my clients are the ones whose names are at the top of the Petitions for Abuse or Neglect, and they are the parties whose fundamental rights to the custody and control of their children being affected by the courts' decisions, they must be free to discuss any aspect of their case with anyone, anywhere, at any time, without the necessity of seeking the permission of the Court.

I am sure the committee is also aware of the ruling of Walker v. Birmingham, 388 U.S. 307 (1967). "The right to defy an unconstitutional statute is basic in our scheme. Even when an ordinance requires a permit to make a speech, to deliver a sermon, to picket, to parade, or to assemble, it need not be honored when it is invalid on its face." Unless, and until, the statute is upheld by the United States Supreme Court, I intend to continue advising my clients that it is unconstitutional.

I believe at this point that the matter of the level of my participation in legal conduct remains privileged. Should either my client or myself be convicted in the future of conduct relating to the [newspaper] article, I will be happy to provide the committee with further information at that time.

Sincerely,

Paula J. Werme, Esq.

Cc: Robert C. Varney, Vice Chairperson

Normally PCC complaints are secret, but a PCC rule allows the target of the complaint to request the hearings be made public. In this case, the PCC took 169-C:25 at face value and asked that be sealed "to protect the integrity of the statute." The NH Supreme Court is involved simply because the PCC is under the auspices of the Supreme Court.

September 8, 1999

Howard Zibel, Clerk
NH Supreme Court
Noble Drive
Concord, NH 03301

Re: In the Matter of Paula J. Werme, Esq.

Dear Mr. Zibel,

Enclosed is an original and 12 copies of a Petition for Protective Orders with regard to Paula J. Werme, Esquire. Based on the confidentiality issues, we request that this matter be given a Special Matters Confidential docket number.

Sincerely,

James L. DeHart

Administrator THE STATE OF NEW HAMPSHIRE SUPREME COURT

A quick search of the NH Supreme Court Rules reveals nothing about "Special Matters Confidential" docket numbers. There is no statutory authority for them.

In The Matter of
A Professional Conduct Complaint
Against Paula J. Werme, Esquire

PETITION FOR PROTECTIVE ORDERS

NOW COMES James L. DeHart, as Administrator of the New Hampshire Supreme Court Committee on Professional Conduct, and brings this Petition for Protective Orders on the basis that said orders are necessary to maintain the integrity of the confidentiality provisions of RSA 169-C, and in support thereof respectfully states as follows:

1. That by letter dated June 24, 1999, Superior Court Associate Justice Larry M. Smukler sent the Professional Conduct Committee a copy of his order the same date in a juvenile proceeding, along with an undated copy of a story from the [newspaper].

2. That Judge Smukler, in his letter, stated:

   Because of Attorney [Paula] Werme's possible participation in the process of disclosure to the newspaper of certain confidential information may implicate the Rules of Professional Conduct, see e.g. Professional Conduct Rules 1.2(d) and 8.4, I am sending these documents to you in conformity with my obligations under Supreme Court Rule 38, Canon 3B(3)(b) for whatever action the committee deems appropriate.

3. That Judge Smukler's order specifically includes the name of the child as well as the name of the mother;

4. That the newspaper story is about the mother and contains information about the judicial proceedings;

5. That the committee docketed a Committee generated complaint against Ms. Werme and she responded;

6. That the name and docket number of the Committee's file is Werme, Paula J. v. Professional Conduct Committee, # 99-072;

7. That the Committee voted to assign the file to a member of the Committee for further review;

8. That on September 7, 1999, the Committee received a brief letter dated September 4, 1999 which states:

   "Pursuant to your Committee Rule 17(4), I would like to request that the complaint against me be made public. Please advise me at your earliest convenience when I may disclose the facts of the allegation."

9. That to allow the Committee's file to become public at this or any later stage would be inconsistent with the confidentiality requirements of RSA 169-C; and

10. That the materials submitted by Judge Smukler to not lend themselves to being effectively redacted.

WHEREFORE, the Committees on Professional Conduct respectfully prays:

A. That this honorable Court, pursuant to its authority under Supreme Court Rule 37(17)(c), issue a protective order sealing the Committee file in Werme, Paula J. advs. Professional Conduct, #99-072.

B. That this Court order that should any hearings be necessary before the Committee in # 99-072 that all hearings be closed.

C. That the Court order all parties involved in Committee complaint # 99-072 not to publicly disclose information or materials submitted to the Committee which are protected by the confidentiality provisions of RSA 169-C.

D. For other and such relief as may be just.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT

Sept. 8, 1999
/s/ James L. DeHart, Administrator

This was certainly not the direction I wanted this matter to follow. I also wanted to present this the house/senate committee investigating DCYF, but could not go against the Supreme Court's orders. Therefore, I asked them not to honor the request.

STATE OF NEW HAMPSHIRE
SUPREME COURT

In the Matter of
A Professional Conduct Complaint
Against Paula J. Werme, Esquire

RESPONSE TO THE PROFESSIONAL CONDUCT COMMITTEE'S
PETITION FOR PROTECTIVE ORDER

NOW COMES Paula Werme, Esquire, Respondent in the Above Petition for Protective Order and respectfully responds to the Professional Conduct Committee's Petition dated September 8, 1999 as follows:

1. The complaint involved Judge Smukler's perception that I may have violated the Rules of Professional Conduct with Respect to encouraging or participating in disclosure of information regarding a child abuse case to the [newspaper] for a newspaper article concerning that case.

2. The Statute in question, both on which the complaint is based, and the reason for the filing of this Petition is RSA 169-C:25 Confidentiality, which states:

    I. The Court records of proceedings under this chapter shall be kept in books and files separate from all other Court records. Such records shall be withheld from public inspection but shall be open to inspection by the parties, child, parent, guardian, custodian, attorney or other authorized representative of the child.

    II. It shall be unlawful for any party present during a child abuse or neglect hearing to disclose any information concerning the hearing

without the prior permission of the Court. Any person who knowingly violates this provision shall be guilty of a misdemeanor.

III. All case records, as defined in RSA 170-G:8-a, relative to abuse and neglect, shall be confidential, and access shall be provided pursuant to RSA 170-G:8-a.

3. Neither I nor my client have been charged with any crime pursuant to this statute, although the matter was reported by Judge Smukler to the Merrimack County Attorney's Office and subsequently, by Attorney James Anderson, to the NH Attorney General's office. The Merrimack County attorney refused to take action on the complaint.

4. Nevertheless, Judge Smukler made a report to the professional conduct committee regarding my actions in the matter, without waiting for a response from the Merrimack County Attorney or the criminal process to determine whether either I or my client committed a crime.

5. My response to the Professional Conduct Committee was based on First Amendment Grounds, as well as Article 22, Part 1 of the NH Constitution, which states "Free speech and liberty of the press are essential to the security of freedom in a state. They ought, therefore, to be inviolably preserved."

6. Based on Article 22 and the Professional Conduct Committee's own rule 17(4) on which I requested disclosure of the complaint against me, there is no "integrity" for the confidentiality provisions of RSA 169-C to maintain. It is a statute that violates the United States and NH Constitutions, and that was the essence of my response to the Professional Conduct Committee.

7. Based on the circular reasoning of the Professional Conduct Committee, the substance of the complaint regarding my action or inaction regarding a disclosure about a child abuse case, (A First Amendment issue) based on a complaint from a judge, prior to a criminal charge being filed (which would result in a full and fair hearing on the constitutionality of the statute), should be suppressed (a violation of the First Amendment and Article 22, Part 1) to protect the integrity of the unconstitutional statute. This argument is untenable.

8. Undersigned attorney wishes to disclose the nature of the complaint to the NH Legislative DCYF Field Practices Study Committee in order to lobby

them to repeal the statute. The Field Practices Study Committee is meeting for public comment on September 29, 1999.

9. Nevertheless undersigned Respondent is not opposed to limiting the disclosure of the complaint to:

   I. the nature of the allegation, without only so much information being disclosed to allow a person of reasonable intelligence to understand the nature and wording of the complaint, without disclosing information sufficient to identify the specific case to which the complaint refers.

   II. the subsequent correspondence and action of the Professional Conduct Committee action on the complaint, including this Petition to Seal the Complaint in violation of their own rules and Article 22, Part 1 of the NH Constitution.

   III. the failure of the judge to allow the criminal process to decide the issue of wrongdoing prior to filing a complaint of possible professional misconduct against me.

WHEREFORE, Respondent respectfully requests the following relief:

A. A prompt hearing on the matter, in time for this Court to make a decision prior to September 29th public hearing of the DCYF Field Practices Study Committee

B. A public hearing on the Motion to Seal, provided that at the hearing that no parties refer to the juvenile matter to which the complaint refers.

C. For disclosure of the complaint pursuant to the Professional Conduct Committee rule 17(4), with such limitations as this Court deems just under the Constitution of the State of New Hampshire.

D. For other and such relief as may be just.

Respectfully submitted,

September 9, 1999
/s/ Paula J. Werme, Esq. - NH Bar 12173
83 North Main Street
Boscawen, NH 03303
753-9384

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing response was forwarded to the Professional Conduct Committee this 9th day of September, 1999.

Paula J. Werme

This is the first mail I received from the person assigned to investigate the case. Little did I know I wouldn't hear from him at all the next year. I did reply promptly, but don't have that letter handy.

Thomas R. Hanna
Attorney
41 School Street
Keene, New Hampshire 03431

Personal and Confidential

October 4, 1999

Paula J. Werme, Esquire
83 North Main Street
Boscawen, New Hampshire 03303

RE: Werme, Paula J. advs. Professional Conduct Committee #99-072

Dear Ms. Werme:

I am writing to you in my capacity as a member of the New Hampshire Supreme Court Committee on Professional Conduct. The above-referenced complaint was recently referred to me for further investigation.

To facilitate my review and before I proceed further, I would appreciate your mailing or faxing to me a copy of Walker v. Birmingham, 388 U.S. 307 (1967).

At some point in the near future, I would like to speak with you regarding the allegation contained in the complaint. I would appreciate it if you would give me a call. If I am not available when you call, please let my secretary, Gloria, know what time would be best for me to return your call.

Thank you very much for your anticipated assistance in this matter. I look forward to hearing from you.

Sincerely,

Thomas R. Hanna

TRH/gmv
Cc: James L. DeHart, Administrator
Committee on Professional Conduct

The Supreme Court finally acted and ruled that the important part of the proceedings be made public. However, they did not act in time to let me present this before the house/senate committee on DCYF Field Practices. The committee hasn't produced their final report. This information will be delivered soon.

STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. SMC-99-003, In the Matter of Paula J. Werme, the Court upon December 27, 1999 made the following order:

The petition of the professional conduct committee for protective orders is granted in part and denied in part. The original professional conduct committee file shall be sealed. The committee, however, shall prepare a redacted version of the file which shall be made public. The public file shall not contain work product or internal memoranda of the committee. The committee shall redact only those portions of documents in the original file as necessary to comply with RSA 169-C:25.

The committee's request that any hearings be closed is denied without prejudice. The Court assumes that all parties shall comply with RSA 169-C, and therefore declines at this time to issue any order requiring parties not to disclose information or materials protected by the confidentiality provisions of RSA chapter 169-C. Cf. Keene Publishing Corp. v. Cheshire County Super. Ct., 119 N.H. 710, 712 (1979) (presumption against use of prior restraints on speech and publication.)

Howard J. Zibel,
Clerk

More than a year later and this case is still open! Oh well, I can't wait for the PCC to clarify things (it's not their job to interpret law anyway). Here's a letter I wrote to Judge Kelly to let him know where I stand on the issue.

November 3, 2000

The Honorable Edwin Kelly Administrative Judge - District Court PO Box 389 Concord, NH 03302-0389

Re: New Protocols for Abuse and Neglect Cases

Dear Judge Kelly,

I've now had time to review some of the protocols on the issue of abuse and neglect cases, and I would in particular like to point out to you one glaring error in the protocols. Protocol # 5 states:

> All parties, witnesses, and others present shall be advised by the court, pursuant to RSA 169-C:25, that it is unlawful to disclose any information concerning the case records or hearings to any person.

I don't know how your courts define case records, but RSA 170-G:8-a, I specifically defines case records very narrowly, namely as:

> I. The case records of the department consist of all official records, regardless of the media upon which they are retained, created by the department of health and human services in connection with a report received pursuant to RSA 169-C:29, or cases brought under RSA 169-B, 169-C, 169-D, or 463, or services provided to the child or family without a court order pursuant to RSA 170-G:4, including intake and assessment reports, service or case plans, case logs, termination reports and a list of persons or entities providing reports to the department or services to the child or family. Such records do not include:
>
> (a) Records created as part of an action brought pursuant to RSA 170-B or 170-C.
>
> (b) Records submitted to or maintained by the courts, or records created by third parties, such as psychologists, physicians, and police officers, even if such records are prepared or furnished at the request of the department.

Despite the narrow definition of what is prohibited from disclosure by the statute, it has, been, and will continue to be, my policy and practice to advise all of my clients, who consist almost exclusively of parents named in petitions for abuse or neglect, or non-offending parents, that this law is in violation of Article 22, Part 1 of the NH constitution, and is void as applied to them. As you well know, the right to defy unconstitutional laws is "basic to our scheme." Walker v. Birmingham, 388

U.S. 307 (1967). I will not tolerate any declaration that these "protocols" have the force and effect of law, particularly as this court may wish to implement these policies with respect to free speech. They are VOID.

I intend to continue to use court records legally furnished to me by clients and non-clients in the defense of charges of abuse and neglect, and to maintain my right to publish those record on the internet or otherwise, subject to appropriate releases from the parties furnishing the records to me. I suggest that the judges and others in child abuse and neglect matters take into consideration that their attempts to keep court pleadings and orders secret will be in vain, should citizens of this state decide to share them in the pursuit of freedom.

I enclose my web page on the matter, so you can see that I am extremely serious about my oath to preserve and protect the Constitution of the United States and New Hampshire, even when it means being brought in front of the Professional Conduct Committee. I trust you will do the same, and remove the offending language from the protocols.

Sincerely,

Paula J. Werme, Esq.

cc: Children and Family Law Committee

It's now more than two years since this complaint was filed. This is blocking my admittance to the US Supreme Court to file a Writ of Certiorari with them. This is not just affecting me, it's affecting my clients, and it's time to rattle the cage.

Date: Wed, 08 Aug 2001 13:58:16 -0400
To: <Thomas R. Hanna>
Subject: Since you haven't returned my telephone call

Jim DeHart told me that my PCC Complaint on the Concord Monitor news story has been assigned to you for legal research.

I consider it extremely unprofessional for you to have failed to do the small amount of legal research it would have taken to dismiss the PCC complaint on me for the violation of RSA 169-C:25.

Walker v. Birmingham, 388 U.S. 307 (1967) has not been overturned to my knowledge, and it takes only a first year legal student to shepardize the case.

This complaint is over two years old, and I wrote a letter to the PCC asking them to clear up my open PCC complaints in September of last year. My application for the US Supreme Court bar is now being held up because I have to explain my OPEN PCC complaints to them. This particular one is ridiculous, and your two year delay in resolving it is inexcusable.

I do not appreciate being told that you are "in a meeting" with clients when you haven't attended to your other responsibilities, and then not returning my phone call. Please do your job.

Well, I don't think Atty. Hanna completely appreciated the letter, but the cage is rattled. I had my client file the Writ of Certiorari Pro se. Not the way things should work....

August 20, 2001

Paula Werme, Esquire
83 N. Main St
Boscawen, New Hampshire 03303

Dear Ms Werme:

This will acknowledge receipt of your August 8 letter. I feel very bad that I have not completed my investigation of the PCC complaint against you and made my report to the full committee. I will endeavor to do so soon by elevating your matter above others of equal urgency. Also, I assure you that I will be objective and do the best that I can do notwithstanding your rather extreme comments. I particularly apologize for not returning your call on August 6. This year, I sandwiched 3 ½ days of work (August 6 through August 9) between two vacations, the latter of which ended this past weekend. Today is my first day back.

Sincerely,

Thomas R. Hanna

Cc: James L. DeHart, Administrator
New Hampshire Professional Conduct Committee

Well, six months later and nothing has happened. I'm not sure what I can do other than to remind him and others that I'm still waiting.

February 8, 2002

Thomas R. Hanna, Esq.
41 School Street
Keene, NH 03431

Dear Attorney Hanna,

I call your attention to your letter of August 20, 2001, in which you indicated that you would attempt to "elevate[] my matter above others of equal urgency." Your letter involves the professional conduct matter filed by Judge Smukler in 1999, a matter of which the Supreme Court is well aware, since it has already been the subject of an order concerning the complaint. Docket # SMC-99-003. It would appear that your efforts at investigation have been somewhat less than substantial in this regard. I spoke with Steve Varnum some months back, and he indicated to me that he has never heard from any member of the Professional Conduct Committee concerning the matter. Neither has my client. Nor have you spoken to me concerning the complaint.

I will remind you that as a member of the Supreme Court Professional Conduct Committee, your duties are judicial in nature. Supreme Court Rule 38, Canon 3B (2) states that "A judge should require his staff and court officials subject to his direction to observe the standards of fidelity and diligence that would apply to him."

I don't consider your actions in this matter to comport with the standards of diligence required of an court official subject to the direction of the NH Supreme Court judges. I once again ask you to do your job so this matter may be concluded.

Sincerely,

Paula J. Werme

cc: NH Supreme Court Justices

I give up. If I can't get action going to the principals myself, I guess it's time to file a grievance. Given that the PCC is part of the Supreme Court and that it has the power to mete out penalties, the Judicial Conduct Commission must be the relevant organization, so I filled in their grievance form on my typewriter.

02-017
RECEIVED MAY 22 2002

STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMISSION
Grievance Cover Sheet

Your Name Paula J. Werme, Esq.
Street 83 N. Main St. City/State/Zip Boscawen, NH 03303
Telephone (603) 753-9384 E-mail pwerme@attbi.com -

> Please note that the Commission has no authority to change a judge's decisions or rulings. Our jurisdiction extends only to conduct that violates the Code of Judicial Conduct, which may be found at www.state.nh.us/jcc. Additionally, our rules prohibit us from considering conduct that occurred more than three years ago or grievances that have been filed with the Supreme Court Committee on Judicial Conduct.

In order to help the Commission understand the circumstances and specific conduct that you are complaining about please furnish the following information:

Name of Person(s) you are complaining about (Judge, Master, Clerk, Register, or other person):
Tom Hannah - Member - Supreme Court ProfessionaL Conduct Committee
Court where conduct occurred Supreme Court
Name of the case In the matter of Paula J. Werme, Esq.
Docket Number 99-072
What is the status of this case? "referred" to Tom Hanna "for further investigation."
Date(s) of Conduct October 4, 1999 - present
Did you witness the conduct in question? Yes No
If not, how were you affected by the conduct? Mr. Hannah has not contacted me, except fo his initial letter, nor has he investigated the complaint, nor has it been closed.
Have you filed a complaint about this conduct with the Supreme Court Committee on Judicial Conduct? Yes No
Describe the conduct you are complaining about and summarize the supporting evidence:

Violation of Canon 3A(5), 3B(2). Tom Hannah, or the members of the Supreme Court, failed to exercise due diligence in the investigation of the complaint resulting in the complaint being open foralmost three years. I have informed the committee that I wanted to be admitted to the U.S. Supreme Court to practice, however, OPEN complaints, even ones that are in the investigatory stage, are grounds in the U.S. Supreme Court for them to NOT consider the application. As I pointed out to Tom Hanna, this complaint is ridiculous, as it involves First

Amendment and Article 22 rights of my clients. Attached to this complaint is my web page on it, which contatins most of the relevant info. I am also enclosing an affidavit from Steve Varnum, the newspaper reporter.

I hereby represent that I have not filed this complaint with any other disciplinary group and upon receipt of a decision in this case, I agree not to refile the complaint with any other similar agency or Commission.

I swear or affirm under pains and penalties of perjury that the information contained in this grievance is true to the best of my knowledge.

Signature /s/Paula J Werme Date 5-20-02

Commission rules require that you keep confidential the fact that you have filed a grievance until the Commission brings formal charges against the judge or otherwise disposes of the grievance.

Mail to: **Judicial Conduct Commission, 501 South Street, Bow, NH 03304**

They disagree, but did forward the grievance on to the PCC. Apparently they concluded that the PCC is the body that disciplines the PCC. Checks and balances? At least they took less than a month.

STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMISSION

June 18, 2002

Paula J. Werme, Esquire
83 North Main Street
Boscawen, New Hampshire 03303

Dear Ms. Werme:

At its meeting on June 14, the Commission determined that the grievance you filed concerned a person that is not subject to the Code of Judicial Conduct and, therefore, dismissed your complaint.

Pursuant to Rule (5)(d)(1) of our *Procedural Rules*, we are returning your grievance to you as well as forwarding a copy of your frievance to James DeHart, Esp. of the N.H. Supreme Court Committee on Professional Conduct for his review.

Ms. Margaret Lynch recused herself and left the meeting during the consideration of this matter.

Sincerely,

Donna Sytek
Chairman

Well, finally the PCC acts. They didn't dismiss the complaint as I had hoped, but have scheduled a hearing.

The State of New Hampshire Supreme Court

Professional Conduct Committee
4 Park Street, Suite 304
Concord, New Hampshire 03301
(603) 224-5828 - fax (603) 228-9511

July 22, 2002

Certified Mail #7001 251000043977 4187
Return Receipt Requested

Re: Werme, Paula J. advs. Professional Conduct Committee #99-072

NOTICE OF CHARGES

To: Paula J. Werme, Esquire
83 North Main Street
Boscawen, New Hampshire 03303

In accordance with New Hampshire Supreme Court Rule 37 A(3)(b)(2) you are hereby notified that a hearing on the above entitled matter has been scheduled for Wednesday , August 21, 2002 at 1:00 p.m. at the Administrative Office of the Courts Building, Noble Drive, Concord, New Hampshire. Will you please inform the receptionist of your arrival.

In this Committee generated complaint, which has been redacted per Order of the Supreme Court dated December 27, 1999 in Case No. SMC-99-003 In the Matter of Paula J. Werme (the redacted version of which will be used at the public hearing in this matter), and which was based upon a letter dated June 24, 1999 from Associate Superior Court Justice Larry M. Smuckler to James L. DeHart and documents enclosed with that letter, your attention was directed to allegations

made by Judge Smuckler that your possible participation in the process of disclosure to the newspaper of certain confidential information may implicate certain Rules of Professional Conduct. Specifically, Judge Smuckler had provided the Committee with a copy of an Order of the Merrimack County Superior Court dated June 24, 1999 in a certain child abuse proceeding and a copy of an article from the Concord Monitor dated June 13, 1999 entitled "Defending herself, mother fights for her child"; that the order of Judge Smuckler indicated that the matter that was before the Court was a motion of the Court Appointed Special Advocate ("CASA") for a show cause hearing in which the petitioner in the case had filed a concurrence; that the child, through her attorney filed a motion for further orders regarding the confidentiality of juvenile proceedings' pursuant to N.H. RSA 169-C:25(II); that the CASA' s motion, the petitioner's concurrence and the child represented that the Sunday Concord Monitor ran a headline story that indicated that confidential information about the proceeding before the Court was disclosed to the newspaper by the respondent and by you, who were representing the respondent; that the child, through her attorney, represented that the disclosure of this confidential information had an adverse effect on the child; that, citing RSA 169-C:25, CASA, the petitioner and the child requested the Court to schedule a hearing at which the respondent and you would be required to show cause why sanctions should not be imposed; that the statute, which was cited by the CASA, the petitioner and the child, established the sanction to be imposed which is criminal liability; that the Court did not have the power to initiate this sanction, but, rather, an appropriate prosecutorial arm of the State of New Hampshire must initiate it; that the Court indicated that neither the respondent nor you had sought or obtained the prior permission of the Court for the disclosure of the confidential information; that the Court ordered that the order and the newspaper article would be forwarded to the Merrimack County Attorney; and that the Court further ordered that the parties were to adhere to the confidentiality requirements of RSA 169-C:25 and that violation of the order might constitute contempt of court.

In your response to this complaint you indicated that the statute complained of as being possibly violated was RSA 169-C:25, II which provides the following:

> It shall be unlawful for any party present during a child abuse or neglect hearing to disclose any information concerning that hearing without the prior permission of the Court. Any person who knowingly violates this provision shall be guilty of a misdemeanor;

that Judge Smuckler indicated that the sanction for violation of the statute is criminal liability; that to your knowledge, no one has ever been prosecuted in this State for the violation of this statute and as of the date of your letter of response, you were unaware that either you or your client had been charged with its violation;

that you advise all of your child abuse and neglect clients that the statute, as applied to them, infringes their fundamental rights to political speech under the United States Constitution, Amendment I, and the New Hampshire Constitution, Article 22, Part I; that Article 22 states the following:

> Free speech and liberty of the press are essential to the security of freedom in a state. They ought, therefore, to be inviolably preserved;

that you can only reconcile the statute with the Constitution in one way; that inviolable means exactly what it says, and your clients' conduct is protected; that, since 'your clients are the ones whose names are at the top of the Petitions for Abuse or Neglect, and they are the parties whose fundamental rights to the custody and control of their children are being affected by the courts' decisions, they must be free to discuss any aspect of their case with anyone, anywhere, at any time, without the necessity of seeking the permission of the Court; that you were sure that the Committee is aware of the decision of the United States Supreme Court in Walker v. Birmingham, 38 U.S. 307 (1967) in which the Court stated that "(t)he right to defy an unconstitutional statute is basic in our scheme. Even when an ordinance requires a permit to make a speech, to deliver a sermon, to picket, to parade, or to assemble, it need not be honored when it is invalid on its face;" that unless, and until, the statute is upheld by the United States Supreme Court, you intend to continue advising your clients that it is unconstitutional; that you believed, at the point that you drafted your answer to the complaint, that the level of your participation in legal conduct remains privileged; and that should either your client or you be convicted in the future of conduct relating to the Concord Monitor article, you will be happy to provide the Committee with further information at that time. This paragraph is only a summary and reference is made to your answer for further detail.

Involved in this complaint are questions under the Rules of Professional Conduct, in particular, but not limited to Rules 1.2(d); 3.4(c); 8.4(a) and 8.4(b). More specifically questions are raised as to whether you participated in the disclosure of confidential information to the Concord Monitor; whether by doing so you committed criminal acts or assisted your client in committing criminal acts; whether by doing so you knowingly disobeyed an obligation under the rules of a tribunal; and whether, because of the aforesaid conduct, you committed acts that are in violation of the Rules of Professional Conduct.

You are hereby advised that any failure to attend this hearing may subject you to findings of professional misconduct and to the imposition of or request for appropriate sanctions.

Any and all further notices concerning this hearing, including any adjournment thereof, shall be given by Margaret H. Nelson, Vice Chair of the Committee. There will be no continuances except for extremely good cause shown.

You are advised that you may be represented by counsel at the hearing and that you may have witnesses present and may present evidence in your own behalf. You are further advised that the New Hampshire Supreme Court has issued an order In the Matter of Paula J. Werme, dated December 27, 1999 in which it stated, in denying (without prejudice) the Committee's request that any hearings in this matter be closed, that it "...assumes that all parties shall comply with RSA chapter 169-C...". The hearing panel intends to strictly adhere to the provisions of that statute and to require strict compliance with the statute with regard to all exhibits and testimony received at the hearing. Should anyone not comply with the provisions of this statute, the hearing will be immediately terminated and appropriate relief will be sought.

It is important to note that in any given matter, not every member of the hearing panel is likely to have read the entire file. For this reason you should be prepared to present your position at the hearing. To the extent that additional documentation will be presented, it is requested that at least four copies be submitted to the panel.
Professional Conduct Committee

By: James L. DeHart, Administrator

JLD/ksc
cc: Margaret H. Nelson, Vice Chair
Thomas R. Hanna, Hearing Panel Chair
Paula J. Werme, Esquire
Regular Mail

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At the hearing the Committee and I spent most of the time discussing the legality of disobeying laws that are obviously unconstitutional. This took me by surprise, as I assumed it was common knowledge among people interested in the law. They were also concerned that I referred to a dissent in a decision involving the legality of disobeying an unconstitutional court order. The following note refers to a case that directly considered the question.

August 21, 2002

James L. DeHart, Administrator
Professional Conduct Committee
4 Park Street, Suite 304

Concord, NH 03301
Re: 99-072 Paula Werme v. Professional Conduct Committee

Dear Mr. DeHart,

At today's hearing on this professional conduct complaint, there was extensive discussion on the right to disobey an unconstitutional ordinance v. the duty to obey an unconstitutional court order. The committee mentioned that the cases cited in the dissent of Walker v. Birmingham would be made a part of the record in support of my statement that my clients have no duty to obey an unconstitutional statute.

There was an additional case discussed, pulled from my Constitutional Law Black Letter book, Shuttlesworth v. City of Birmingham, 394 U.S. 147.

Noting that Shuttlesworth involves the same people involved in the Walker case, the court came to the opposite conclusion of the Walker holding, for the reason I originally pointed out in my answer to the committee. I would at this time submit this case to the committee in support of my position, and point out to them in particular footnote # 7 on p. 9 of the computerized print out. It states, as I explained to the committee today, that the issue of violating an unconstitutional court order is a different issue than the right to disobey an unconstitutional law. It also squarely holds that one has a right to disobey an unconstitutional law infringing one's First Amendment rights.

Hopefully, this will bring this matter to a prompt resolution. Thank you.

Sincerely,

Paula J. Werme

There is a Reprimand. I will appeal.

The State of New Hampshire Supreme Court

Professional Conduct Committee
4 Park Street, Suite 304
Concord, New Hampshire 03301
(603) 224-5828 - fax (603) 228-9511

October 16, 2002

Paula J. Werme, Esquire
83 North Main Street
Boscawen, New Hampshire 03303

Re: Werme, Paula J. advs. Professional Conduct Committee -#99-072

REPRIMAND

Dear Ms. Werme:

The Professional Conduct Committee has thoroughly reviewed the entire record of the above entitled matter .

After giving due consideration to this record the Committee finds:

1. that you represented a mother in a 1998 DCYF case on appeal to the Merrimack County Superior Court;

2. that after the Court (Smuckler, J.) ruled against the mother on appeal, a newspaper article about the case appeared In the Concord Monitor on June 13, 1999;

3. that the article was entitled "Defending Herself, Mother Fights for her Child";

4. that the article contained quotes about the case from both you and your client;

5. that, in the article, the author explained how he accessed the confidential documentary evidence about the case: "[The mother] loaned extensive medical, psychological and court records to the Monitor so her story, which had been confined to confidential court proceedings and documents, could be told publicly .";

6. that you did not seek Judge Smuckler's prior approval, as required by RSA 169-C:25(II), before you and your client spoke to the Monitor;

7. that in response to the Monitor article, the attorney for the child filed a pleading indicating that "the disclosure of confidential information had an adverse effect on her.";

8. that Judge Smuckler subsequently referred your actions both to the Merrimack County Attorney's Office and the Professional Conduct Committee;

9. that the Merrimack County Attorney's Office did not bring charges against either you or your client;

10. that as of the date of the Professional Conduct Committee hearing on this matter (August 21,2002), the statute of limitations for a criminal charge under RSA 169-C:25(II) has expired;

11. that you readily admitted that, in advance of the interview, you "advised" your client to violate RSA 169-C:25(II);

12. that you also admitted that, in advance of the interview, you were "absolutely" aware of RSA 169-C:25(II) and its criminal penalty;

13. that you believed that you were entitled to advise your client to violate RSA 169-C:25(II), as it is "unconstitutional on its face";

14. that you testified that you will continue to advise clients to violate this statute,

    [In my original reply it's worded a bit differently:

    > *I advise all of my child abuse or neglect clients that the statute, as applied to them, infringes their fundamental rights to political speech under the United States constitution, Amendment I, and the New Hampshire Constitution, Article 22, Part I....*
    >
    > *... Unless, and until, the statute is upheld by the United States Supreme Court, I intend to continue advising my clients that it is unconstitutional.]*

15. that based on your admissions that you were aware of RSA 169-C:25(II) and its criminal penalty at the time that you advised your client to violate it, the Committee found clear and convincing evidence of a violation of Rule 1.2(d);

16. that Rule 1.2(d) permits a lawyer to counselor assist a client in making a good "faith effort to determine the validity, scope, meaning and application of the law but such a good faith effort should have included a "discussion of the legal consequences to the client of the proposed conduct; and

17. that because of the above cited conduct there is clear and convincing evidence that you engaged in conduct involving professional misconduct and violation of the Rules of Professional Conduct and that you, therefore, violated Rule 8.4(a).

The Committee finds that because of the above conduct you are guilty of professional misconduct and in violation of Rules 1.2(d) and 8.4(a) of the Rules of Professional Conduct. Finally, the Committee made a finding of no professional misconduct on your part with regard to Rules 3.4(c) and 8.4(b).

This letter of Reprimand is issued because of this misconduct and a copy will be placed in your permanent file. The findings in this matter may be considered in determining the severity of discipline imposed for any further violation.

You are entitled to appeal a Reprimand by filing a written notice of appeal in accordance with the Rules of the New Hampshire Supreme Court.

The Professional Conduct Committee

By: Margaret H. Nelson, Chair

MHN/bg

F:\OFFICE\WPWIN\DOCS\CONCLUSN\O2CLOSED\99-072.REP

The appeal format is a little odd and several pages long, so I made it a separate page. The following is the heart of the appeal, the questions for the justices to consider.

1. If an attorney is required by solemn oath to support the Constitution of the United States and of New Hampshire, and upholds that solemn oath by advising a client that article 22 of the NH Constitution gives her an inviolable right of free speech (meaning speech that is within the definition of speech protected by the first amendment and article 22), is it a violation of the Rules of Professional Conduct rule 1.2 (d) to tell the client, based on U.S. Supreme Court case law, that a law infringing that right is unconstitutional, void on its face, and need not be followed?

2. Given that the original notice of charges did not refer to facts alleging that she did not advise her client as to the possible consequences of proposed conduct, can an attorney be reprimanded on that basis when she was not on notice that she had to submit evidence as to her compliance with the requirement?

3. Can an attorney be reprimanded for failing to seek permission of the court to disclose or advising her client that it is legal to disclose confidential records, including court records, psychological records or medical records in the absence of a statute prohibiting such behavior or requiring permission of the court or requiring permission of the court to do so?

4. Is a reprimand admonishing an attorney for telling only a client, as opposed to the world at large, that a statute constitutes an unconstitutional prohibition on free speech simply a means of imposing an unconstitutional time, place and manner restriction on that speech, and punishing otherwise protected first amendment and article 22 speech as well as the right of the client to receive the information?

Attorney meltdown. . . . You might get the impression I don't give a flying rip any more, and you'd be right!

I filed my PCC appeal one day late, and Justice Duggan ordered me to brief whether or not it should be dismissed.

STATE OF NEW HAMPSHIRE

SUPREME COURT

DOCKET # 02-0719

Paula J. Werme v. Professional Conduct Committee

MEMORANDUM ON WHETHER THE APPEAL SHOULD BE DISMISSED AS UNTIMELY FILED ISSUE

Should the Supreme Court dismiss the appeal of Paula J. Werme on a finding of professional misconduct based on the appeal being filed on Monday, November 18, 2002, when the 30 day time for appeal expired on Friday, November 15, 2002?

FACTS *[You want facts? I'll give you facts!]*

In June of 1999, an article appeared in the Concord Monitor regarding one of undersigned attorney's child protection cases in the Merrimack Superior Court . As a result of the article, the judge on the case, Judge Smukler referred undersigned attorney to the Professional Conduct Committee on June 24, 1999 and a complaint was generated by the Committee on July 19, 1999. Undersigned attorney replied to the Committee on July 25, 1999. As a result of undersigned attorney's request that the complaint be made public in early September of 1999, the Professional Conduct Committee petitioned this Court for an order prohibiting the complaint from becoming public on September 8, 1999. On September 9, 1999, this attorney replied to that request, and further requested a prompt resolution of that Petition, as undersigned attorney intended to testify in front of the NH Legislature on September 29, 1999. (Docket # SMC99-003, Response to Professional Conduct

Committee, Paragraph A.). This Court ruled on the Petition on December 27, 1999, almost three months after the legislative hearing.

In the meantime, on October 4, 1999, Committee member Thomas Hanna sent a letter to undersigned attorney stating that the complaint was assigned to him for "further investigation." At that time, he also requested a copy of Walker v. Birmingham, 88 U.S. 307 (1967), which undersigned attorney had referred to in her reply to the Committee. Undersigned attorney promptly complied with that request, and heard nothing further. On June 14, 2000, undersigned attorney wrote to Robert Varney, requesting prompt consideration of two professional conduct complaints then pending against her, stating "Due Process includes the concept of timely consideration of matters involving a person's liberty interest. It includes the right to have the matters decided as well. A person's interest in their law license, and their interest in their reputation are both interests protected by the Due Process clause." On September 25, 2000, undersigned attorney again wrote to James DeHart, administrator of the Professional Conduct Committee, and again asked for prompt consideration of her (then three) outstanding complaints. In it, she cited her intent to appeal Samantha L. to the Supreme Court should the appeal fail in the NH Supreme Court, and submitted a bar application for the U.S. Supreme Court, which asked if any complaints were pending. FN 1. She subsequently submitted an application to the U.S. Supreme Court for admission, and it was promptly returned with her application fee and a letter stating that it would not be considered due to the pending professional conduct matters.

On August 8, 2001, undersigned attorney wrote to Thomas Hannah, indicating that she was anxious to have the matter resolved, and complained that she thought that two years was enough to do the small amount of research required to verify that one has a right to violate an unconstitutional law. She checked with her client, who had heard nothing from the Committee, and had moved to a location where she was not easily contacted. Undersigned attorney also spoke with the reporter, Steve Varnum, formerly of the Concord Monitor. She obtained an affidavit from him in September of 2001 that he had heard nothing from the Committee. On August 20 of 2001, Attorney Hanna replied to undersigned attorney's letter, stating that he would "attempt to elevate this matter above others of equal urgency." [that included his vacation, mentioned in the letter!] Meanwhile, hearings were finally scheduled for two of the three complaints in November of 2001, and they were eventually resolved without reprimands. Undersigned attorney heard nothing further on the Smukler complaint, and wrote to Attorney Hannah on February 8, 2002, to remind him she was still waiting.

On May 22, 2002, undersigned attorney filed a grievance with the Judicial Conduct Commission against Thomas Hanna. On June 18, 2002, the Commission wrote

back, indicating that they did not believe they had jurisdiction to hear a complaint on a member of a Supreme Court Committee, and closed the complaint, filing a copy of their letter and undersigned attorney's grievance with the Professional Conduct Committee. In early July, undersigned attorney received word that charges would be filed, and that a hearing would be scheduled for August. On July 22, of 2002, undersigned attorney received the NOTICE OF CHARGES, and the hearing was set for August 20, 2002.

Much of the hearing was spent explaining to the six committee members hearing the matter that, even though the statement regarding the right to violate unconstitutional laws was in the dissent in Walker v. Birmingham, that the proposition was still good law, because that particular case involved whether or not one had a right to violate an unconstitutional court order. Undersigned attorney perceived during that discussion that the delay of three years in bringing the complaint to hearing was because no one on the committee either wrote for clarification based on their misperception that every word of a dissenting opinion was an inaccurate statement of the law. Undersigned attorney submitted an additional Supreme Court case to the Committee on August 21, 2002, Shuttlesworth v. Birmingham, 394 U.S. 147 (1967), which squarely supported undersigned attorney's legal position, and the Committee rendered its decision on October 17, 2002. In their finding, they appeared to have assumed facts not in evidence, as they made a finding that undersigned attorney's effort to "determine the scope, validity, meaning and application of the law" should "have included a discussion of the legal consequences to the client of the proposed conduct." Since the issue was not in the original COMPLAINT generated by the Committee, or the NOTICE OF CHARGES, no evidence was requested or submitted on that point.

Undersigned attorney, as a result of miscalculating the 30 day deadline for appeal, submitted the appeal on Monday, November 18, 2002, instead of Friday, November 15, the 30th day from the date of decision.

ARGUMENT

THE COURT SHOULD WAIVE THE RULE BECAUSE THE ISSUE IS IMPORTANT, AND THE MATTER MAY NOT COME UP AGAIN DUE TO A CHANGE IN THE STATUTE

Since the filing of the complaint, the legislature changed the wording of RSA 169-C:25, which is the confidentiality provision of the Child Protection Act. It now permits anyone to discuss what happened in a hearing, provided that the parties are not identified. RSA 169-C:25. While undersigned attorney believes that the statute is still unconstitutional as applied to the accused parents, she does not

disclose the identities of her clients without their express permission. For her purposes, which is usually in explaining to either the legislature or others how the Child Protection Act works, it is generally unnecessary to use even that information. Never-the-less, some states have held the confidentiality provisions of their child protection acts to be unconstitutional, e.g. Care and Protection of Edith, 421 Mass. 703, 659 N.E.2d 1174 (1996). Undersigned attorney was not given the opportunity to litigate the constitutionality of the conduct in a criminal setting, because the state did not pursue prosecution of either her client or her. Given that she had no reason to believe there were any prosecutions under the old statute, and that the state had adequate opportunity to pursue the matter in her own case, it is even more unlikely that they would pursue any violation that the statute has been changed. fn2 In addition, it is clear that the statute is widely violated with few, if any consequences to the violators. fn3

THIS COURT HAS THE ABILITY TO WAIVE THEIR RULE AND JUSTICE IN THIS CASE WEIGHS IN FAVOR OF WAIVER

There is no question that the NH Supreme Court generally does not favor late filings of appeals. When a statute states that an appeal must be filed within 30 days of a lower court or agency decision, it is a jurisdictional requirement, and any appeal filed as a result of a miscalculation of a due date must be rejected. When there is no statutory bar to jurisdiction, and justice requires, the Court has the authority to waive the rule. In this case, the inexcusable delays of the Professional Conduct Committee in hearing the matter, and recent changes in federal law weigh in favor of waiving the rule.

This court found inexcusable neglect when an attorney filed an appeal 18 months after the due date when the statute permitted relief for the court to allow late filings under terms and conditions as justice may require. Brady v. Duran, 117 N.H. 275 (1977). In addition, this court has "often strictly adhered to deadlines and other procedural requirements and have denied relief to delinquent parties whose excuses for noncompliance were more meritorious than the excuses offered in the present case. E.g., Pelham Plaza v. Pelham, 117 N.H. 178, 370 A.2d 638 (1977); Timberlane Page 277 Regional Educ. Ass'n v. Crompton, 115 N.H. 616, 347 A.2d 612 (1975); Alden v. Kimball, 104 N.H. 454, 189 A.2d 494 (1963); Sullivan v. Indian Head Nat'l Bank, 99 N.H. 262, 109 A.2d 572 (1954)." Id., 117 N.H. 275, 372 A.2d 283 (1977).

However, this court has also granted relief in some cases by waiving the rules, as permitted in Supreme Court Rule 1, e.g. State v. Cotell, 143 N.H. 275 (1998).

Under the federal rule, mere negligence in the failure to comply with a filing deadline, can be "excusable neglect." The U.S. Supreme Court's analysis indicates that "Congress plainly contemplated that the courts would be permitted to accept late filings caused by inadvertence, mistake, or carelessness, not just those caused by intervening circumstances beyond the party's control. They were "in substantial agreement with the factors identified by the Court of Appeals." Pioneer Investment Services v. Brunswick Assoc. Ltd., 507 U.S. 380 (1993), The Court took into account the following relevant factors: The Court took into account the following relevant factors: (1) the danger of prejudice to the opposing party; (2) the length of the delay and the potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith." Under this analysis, overlooking a court deadline because of miscalculation of the due date is excusable, and the case changed the law of excusable neglect in all federal courts. This Supreme Court also opined that "It is this [excusable neglect] requirement that we believe will deter creditors or other parties from freely ignoring court-ordered deadlines in the hopes of winning a permissive reprieve under Rule 9006(b)(1)." They clearly did not believe that their decision would result in a flood of cases being filed untimely.

This court could decide to waive the rule based on the excessive delays of the Professional Conduct Committee in hearing the matter, or it could choose to follow Pioneer and to redefine "excusable neglect" to bring it into line with current U.S. Supreme Court law. There are good reasons in this case for doing so:

1. Undersigned attorney waited almost three years for a hearing on a complaint, because the rules of the Professional Conduct Committee don't proscribe any time limitations on when any given matter should be set for hearing.

2. The delay of the Professional Conduct Committee in bringing the matter to a hearing, and their failure to "investigate" the matter for three years before scheduling a hearing had serious, negative consequences for undersigned attorney, who was unable to apply for membership in the U.S. Supreme Court bar during that three year time frame solely because a complaint or complaints were pending against her. A strict application of the rules against the Petitioner, when Petitioner had no rule or similar means to effectuate a timely resolution of the open complaints against her is blatantly unfair.

3. Using the factors in Pioneer weighs in favor of waiving the rule and permitting the appeal. There is no prejudice to the other party, as the finding has negligible impact on the Committee itself. The length of the delay was

short, one business day, which is consistent with a miscalculation of the due date of the appeal, and it weighs in favor of a finding of good faith on the part of the petitioner, and the reason for the delay of one day. In this case, the matter was under her control, but the U.S. Supreme Court has rejected the notion that mere negligence in calculating a due date should be grounds for rejecting a late filing in all instances.

CONCLUSION

This court has the discretion to waive the time limitations on filing the appeal. Despite late filing, there are good reasons to waive the rules. Undersigned Petitioner urges the Court to look at all of the factors, including the relatively new federal interpretation of "excusable neglect," and the inaction of the Professional Conduct Committee in waiting three years to schedule the matter for hearing without contacting her, her client, or the newspaper reporter involved in the complaint to investigate the facts. In light of the excessive delay of the Professional Conduct Committee in bringing the matter to hearing, justice requires that an honest mistake resulting in a delay of one business day in filing the appeal should not be grounds for dismissing the appeal when there is no statutory bar to jurisdiction.

Respectfully submitted,

December 20, 2002
Paula J. Werme, Esq.
83 N. Main St.
Boscawen, NH 03303

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MEMORANDUM has been mailed to the Professional Conduct Committee, c/o James DeHart, 4 Park St., Suite 304, Concord, NH 03301 this 20th day of December, 2002.

FOOTNOTES

[fn1] Samantha L. was not appealed to the U.S. Supreme Court because the week after the decision was rendered by this court, Judge Smukler made an order that the child would be returned home, and if "no pleadings" were filed before March 15, 2001, the case would automatically close. The 90 day deadline for filing the U.S. Supreme Court appeal naturally fell within that window. Despite the constitutional guarantee that the right to appeal should not be rendered meaningless by negative consequences of the appeal itself, undersigned attorney

full well knew the negative consequences of the first appeal on her client, and chose not to subject her to the same risk by a Supreme Court appeal.

[fn2] Both Judge Smukler and DCYF attorney James Anderson requested prosecution in the matter, Judge Smukler from the Merrimack County Attorney's office, and James Anderson through the Attorney General.

[fn3] Undersigned attorney had a conversation with another attorney from the seacoast area in early 1999, and the attorney asked her if she heard about the ruling in Merrimack County where the court held that the mother's failure to believe that her child was abused constituted grounds for a finding. Although she doesn't recall the attorney's name, she clearly recalls his statement that "Even DCYF couldn't believe that one!" Certainly, the other attorney was speaking of the case that brought about the charges against undersigned attorney, and he stated he had gotten the information from someone in DCYF.

I finally got the <u>brief for the appeal</u> finished and delivered to the court and all the other parties involved. Now the PCC's lawyer writes a response. The brief (1) is too big to include here and (2) defies porting to HTML, thanks to things like footnotes, etc. So its out as a separate PDF file.

My husband and I attended an event that featured a short talk by Ken Starr, the independent prosecutor in the Whitewater (et al) affair. I bought a copy of his new book on the U.S. Supreme Court. After talking to him about my difficulties in getting fellow lawyers to appreciate the Constitutional issues in this case, he wrote:

FIRST AMONG
EQUALS

For Paula Werme -

Be strong!

Ken Starr

The NH Supreme Court has upheld the decision. They determined that it doesn't make a difference if the statute was unconstitutional, that I should have challenged the statute in court before advising a client of the words of the US Supreme Court. "The right to defy an unconstitutional statute is basic in our scheme. Even when an ordinance requires a permit to make a speech, to deliver a sermon, to picket, to parade, or to assemble, it need not be honored when it is invalid on its face." Walker v. Birmingham, 388 U.S. 307 (1967) I will appeal. It will be expensive, however. If you wish to make a donation to the appeal fund, please forward checks to Paula Werme , 83 N. Main St., Boscawen, NH 03303

Contact Paula Werme, Esq. or return to Law Practice home page.

Last updated 2003 December 19.

PS – never appealed – it was too expensive.

NOTICE
PER ORDER OF THE SUPREME COURT:
NO PHOTOGRAPHS
NO VIDEOS
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INSIDE THE COURTHOUSE
WITHOUT PRIOR APPROVAL FROM THE COURT

STATE OF NEW HAMPSHIRE SUPREME COURT OF NEW HAMPSHIRE ORDER

Pursuant to its constitutional and statutory authority and powers of general superintendence over the New Hampshire court system, and in accordance with Supreme Court Rules 19 and 54, the Supreme Court orders as follows:

1. This Order supersedes and replaces Circuit Court Administrative Order 2011-17, Superior Court Administrative Order 2011-50, and Supreme Court Orders dated January 11, 2008, and October 17, 2017, on the use of recording equipment.

2. The Supreme Court acknowledges its obligation to provide open access to court proceedings and its responsibility to provide constituents with a forum that is safe, dignified, and free from unnecessary disruption. The court is also obligated to ensure that constituents can conduct their business and observe court operations without fear of intimidation, annoyance, or embarrassment. The purpose of this Order is to balance all interests of ensuring access while maintaining a safe and dignified environment that is free from unnecessary disruption.

3. All persons are prohibited from photographing, recording (audio, camera, cellphone, video, or any other media), broadcasting, transmitting, or televising in the lobby or other, non-courtroom area, unless the presiding judge

for that court, after consultation with court security personnel, determines that a designated staging area is appropriate under the circumstances of a given case. A designated staging area means any place within the lobby area of the courthouse where cameras or audio recording equipment may be located. If the presiding judge determines that a staging area is appropriate, no cameras or audio recording equipment may be used in any area outside the designated staging area within the lobby area or other public area of the courthouse. The court security personnel shall have the authority to enforce this Order by requiring anyone who violates it to leave the courthouse.

4. Law enforcement officers with a body-worn camera may activate the recording function of the camera inside a courthouse only if done in accordance with RSA 105-D. Such recordings shall not be utilized for training under RSA 105-D:2, XVII(b) without an order authorizing their use from the presiding judge for the court where the camera was activated. No such recordings shall be made public unless subject to production under RSA 91- A:5, X. If disclosure under RSA 91-A:5, X is required, any member of the public inside the courthouse depicted in such video shall be edited to mask their identity under the invasion-of-privacy protections provided for in RSA 91- A:5, X.

5. Supreme Court Rule 19, District Division Rule 1.4, Family Division Rule 1.29, Probate Division Rule 78, and Superior Court Rule 204 (collectively the "Recording in Courtroom Rules"), related to the use of cameras,

broadcasting equipment, and recording devices during courtroom proceedings, shall be strictly enforced. No person shall photograph, record, or broadcast any court proceeding without providing advance notice to the presiding judge. A written request shall be provided to the court clerk on the form

prescribed by the court. The form is available on the Judicial Branch website, www.courts.nh.gov, or from the Judicial Branch Communications Office.

6. This Order and all Recording in Courtroom Rules apply whether the proceeding is live or being broadcast via an electronic platform, including but not limited to WebEx, Zoom, Teams, or any other electronic platform.

7. Unless otherwise prohibited by the presiding judge, those entering State courthouses may possess and use cell phones, smart watches, computers, pagers, and similar electronic devices within the courthouse. However, such devices shall be set on silence mode, and no telephone calls made or received while in any courtroom or judge's chambers without specific advance authorization by the presiding judge. In no event shall any such devices be used in a manner designed to photograph, record (audio or video), broadcast, transmit, or televise any proceeding, scene, discussion, or event unless specifically authorized by the presiding judge.

8. If any person refuses to comply with the conditions of this Order, or if a person's behavior is otherwise disruptive to the proper administration of justice, and such person is ordered to leave the courthouse and refuses to do so, security may request assistance from local law enforcement officials or take

3

such other measures to ensure the safety and security of the public and court personnel. Such persons who are disruptive and/or refuse to leave the courthouse may be subject to arrest at the discretion of local law enforcement officers.

Date: November 16, 2021

ATTEST:

____

Timothy A. Gudas, Clerk Supreme Court of New Hampshire

NOTE: Reformatted when copied and pasted from NH Supreme Court web site. Gudas signature did not copy. https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-11/11-16-21-order-concerning-video-and-other-recording-in-courthouses.pdf

September 23, 2022

Paula Werme, Esq. (retired)
465 Woodbury Ave. #104
Portsmouth, NH 03801

Joseph Ribsam, Director
NH DCYF
129 Pleasant St. #4
Concord, NH. 03301

Re: NH DCYF involvement in private custody matters
Right to KNOW under RSA 91-A.

It has come to my attention that at least some NH judges are - without statutory authority to do so - adding DCYF as PARTIES to private custody matters, and requesting DCYF reports to be filed under seal (weather or not they have added DCYF as PARTIES).

For each such case in the last five years, I would like to know:

1). The name of the judge adding DCYF as a PARTY in a custody matter

2). The docket # of every such instance of this happening.

3). The names of any and every judge who asked DCYF to file a "report" - even if they did not add them as a "party" to a private custody matter.

3). Whether DCYF complied with a judge's order to "file a report" in a case and

4). For EACH instance of DCYF being illegally added as PARTIES or asked to otherwise file a "report in custody matters - and/or requested to file a "report" in a private custody matter - if such a report WAS filed, whether or not the parents / other parties in a custody matter were sent copies as evidenced by signed certificates of service.

5). For each such case, is there any documentation that the parents in a custody matter even have the name of the person that signed the report?

I realize this may be a larger job, but I feel it is important. Your computer data base should be able handle most of it.

Sincerely,

Paula J. Werme, Esq. (retired)

4/29/23

Unanswered entirely

May 9, 2019

Paula J. Werme, Esq. (ret).
429 New Wharf Rd.
Milford, DE 19963

The Honorable David King
NH Circuit Court Adminstrative Office
1 Granite Place, Suite N400
Concord, NH 03301

Re: Right to Know Request /
Request under Associated Press v. State, 153 N.H. 120 (2005)

Dear Judge King,

As you know, the NH Supreme Court has held that the courts records are part of the public's Right to Know, subject to "some overriding consideration or special circumstance."

I am requesting from you at this time:

Information on who conducts training, where, and how NH Circuit Court judges are trained.

The length of time a newly appointed Circuit Court judge trains prior to assuming duties on the bench.

A copy of all training materials used in the training of NH Circuit Court judges. If the materials are lengthy and cannot be supplied on the enclosed thumb drive because of size limitations, a copy of the training summary (table of contents of any materials used), the amount of time spent on each topic covered in training, and the name, business addresses and/or other contact information, and qualifications of all people used to train circuit court judges.

If the training is conducted all or in part by private entities out of state, the names and addresses of those entities and the approximate location of training. City and state will suffice for location of training only. This part of my request does not negate the fact that I want specific names and contact information for all persons involved in NH Circuit Court judge training.

If you choose to refuse to supply the materials, a detailed explanation of what specific overriding considerations or special circumstances you believe exempts you from answering this request to keep the courts open and accountable to the people of the state.

Sincerely,

Paula J. Werme, Esq. (ret.)
NH Bar # 12173

cc: NH ACLU
NH Right to Know Coalition

HEINONLINE

LOG IN

70 Judicature 95 (1986-1987)
Judicial Attitudes toward Child Sexual Abuse: A Preliminary Examination

Judicial attitudes toward child sexual abuse: a preliminary examination

Although, in general, judges say they believe child sexual abuse is a serious crime, they are not unanimous in their opinions about the problem. Increased judicial education in this area may be needed.

by Edward J. Saunders

Today child sexual abuse is a crime which has attracted public attention as never before. So much attention, in fact, that some commentators have suggested that a witch-hunt mentality now pervades the issue.[1] Among professionals charged with dealing with these crimes on behalf of society, judges at all levels of the judicial system have special significance.

The incidence of child sex abuse cases reaching the judiciary is unknown. While reporting of crimes against children has increased dramatically over the last decade, the incidence of trial activity involving these cases is not well documented. Many commentators have expressed apprehension about child victims' revictimization in the course of the judicial process.[2] One researcher, however, has found that relatively few victims, in fact, face a trial proceeding. In his examination of court processing of child sexual abuse cases in the District of Columbia, Rogers found that the realities of criminal justice handling of these cases was not "nearly so bleak or detrimental as often portrayed."[3] In cases heard in 1978 and 1979, he found that the odds were: less than one in eight that a child would face a grand jury; less than one in 20 that the child would testify at trial; and less than one in 50 that the child would have to testify in open, adult criminal court.

Given these findings, Rogers concluded that the potential trauma faced by a child victim having to testify in open court and undergo cross examination is the rare exception rather than the rule. However, in his [earlier] study, De Francis found that 63 per cent of the 250 cases he followed required 1,000 court appearances of child victims.[4]

In response to continued criticism of its activities in cases of child sexual abuse, the judicial system nationwide is attempting to make the process less traumatic to young victims, while still observing the constitutional guarantees that must be assured to defendants. Judges are the mediators within a system that balances competing interests of justice-seekers: those involving the interests of the state and those representing the interests of the accused.

This article reports the results of a survey of judges' attitudes toward child victims of sexual abuse, their assailants, and the crime and punishment of child sexual abuse. The study mirrors an earlier inquiry into judges' attitudes toward rape victims reported in *Judicature* a decade ago. In that study, Bohmer found that judges revealed a high level of concern for child victims of rape. She wrote:

> In assessing the rape allegations of children, the judges feel protective toward the complainant and to a large extent abandon their category of the "vindictive female." Although the judge may feel antagonistic toward the child victim who alleges rape to assist her mother in getting even with a man, he also tends to view the child as a pawn in an adult world.[5]

Bohmer argued that the attitudes of judges warranted further inquiry because of their ability to affect the proceedings both directly by their rulings on the evidence and indirectly by their demeanor toward the participants. Furthermore, judicial attitudes toward victims, she suggested, can play a role in determining their adjustment.

Attitudes are studied because they are among factors that dispose individuals toward certain patterns of behavior. While the researcher readily admits that a causal relationship between attitudes and actual behavior is not always a direct one, proponents of attitude theories argue that attitudes may be linked in a causal chain to behavior.[6] In the present study, judges' beliefs about victim culpability, victim credibility, offender cul-

1. Press, *Children and the courts*, Newsweek, February 18, 1985, at 72-75.
2. Bulkley and Berliner, *Advocating for sexually abused children in the criminal justice system*, in Sexual Abuse of Children: Selected Readings (Washington, D.C.: U.S. Department of Health and Human Services, 1980); Libai, *The protection of the child victim of a sexual offense in the criminal justice system*, 15 Wayne L. Rev. 977-1032 (1969); Weiss and Berg, *Child victims of sex assault: Impact of court procedures*, 21 J. of the Am. Academy of Child Psychiatry 513-518 (1982).
3. Rogers, *Child sexual abuse and the courts: Preliminary findings*, in Social Work and Child Sexual Abuse 145 (New York: Haworth Press, 1982).
4. DeFrancis, Protecting the child victim of sex crimes (Denver: American Humane Association, 1969).
5. Bohmer, *Judicial attitudes toward rape victims*, 57 Judicature 306 (February 1974).
6. Ajzen and Fishbein, Understanding Attitudes and Predicting Social Behavior (Englewood Cliffs, NJ: Prentice-Hall, 1980).

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A Judicial Guide to Child Safety in Custody Cases

National Council of Juvenile and Family Court Judges
Family Violence Department

Mary V. Mentaberry
Executive Director, NCJFCJ

Billie Lee Dunford-Jackson, JD
Co-Director, Family Violence Department

Maureen Sheeran
Co-Director, Family Violence Department

Authored by:

Hon. Jerry J. Bowles
Jefferson County Circuit Court, Kentucky

Hon. Kaye K. Christian
District of Columbia Superior Court, Washington, D.C.

Margaret B. Drew, JD
Professor of Clinical Law, University of Cincinnati College of Law

Katheryn L. Yetter, JD
Senior Attorney, Family Violence Department

2008

National Council of Juvenile and Family Court Judges
University of Nevada • P.O. Box 8970 • Reno, NV 89507
1041 North Virginia Street • Third Floor • Reno, NV 89503
(775) 784-6012 • FAX (775) 784-6628

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A Judicial Guide to Child Safety in Custody Cases

Working Group Members*

Allen M. Bailey, JD
Family Lawyer
Law Offices of Allen M. Bailey
Anchorage, Alaska

Hon. Paula Brownhill
Presiding Judge
Clatsop County Circuit Court
Astoria, Oregon

Stephen E. Doyne, PhD
Clinical and Forensic Psychologist
La Jolla, California

Bunny Flint, MFT
Parent Coordinator/Mediator
Mid Point Mediation LLC
Chelsea, Vermont

Ona Foster, LMSW
Director
FLP Family Center
Dallas, Texas

Hon. Divida Gude
Magistrate, Fulton County
Atlanta, Georgia

Grace Mattern
Executive Director
New Hampshire Coalition Against Domestic and Sexual Violence
Concord, New Hampshire

Anjali Nagpaul, JD
Executive Director
Asian/Pacific Islander
Domestic Violence Resource Project
Washington, DC

Jeremy NeVilles-Sorell
Resource Coordinator
Mending the Sacred Hoop
Duluth, Minnesota

Attiyya Nuruddin
Victim Advocate Coordinator
Sojourner Truth House
Milwaukee, Wisconsin

Hon. James M. Riehl
Kitsap County District Court
Port Orchard, Washington

Paulette Sullivan Moore, JD
Policy Coordinator
Delaware Coalition Against
Domestic Violence
Wilmington, Delaware

Consultants

Lauren Litton, JD
Meeting Design and Facilitation
Norwalk, Ohio

Martha Wade Steketee, MSW
Evaluation Design and Analysis
Chicago, Illinois

Larry Winkler
Graphic Design Artist
Reno, Nevada

Project Partner

Rebecca Henry, JD
Senior Staff Attorney
American Bar Association
Commission on Domestic Violence

* *Contact information accurate as of publication*

A Judicial Guide to Child Safety in Custody Cases
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A Judicial Guide to Child Safety in Custody Cases

Introduction

Custody and visitation decisions are among the most difficult that judges make. Whether by statute, case law, or custom, all state and tribal courts employ some form of "the best interest of the child" standard in making these decisions. A child's physical, emotional, and psychological safety are always in his or her best interest. This tool is designed to maximize a child's safety as you determine issues of custody and visitation and can help you

- Assess whether a child or parent is at risk for physical, emotional, or mental abuse.
- Review the evidence so that the safety of the child is the primary factor in determining his or her best interest.
- Evaluate safety risks at various stages of a case, from initial filing through post-disposition.
- Make findings that explain and prioritize safety concerns.
- Draft custody and visitation orders that maximize family safety.

This tool will also assist you in conducting a thoughtful exploration of the child's safety risks when abusive behavior has been part of the family fabric. Sometimes, the parties may not articulate clearly either the abuse or the child's safety risks during litigation. Indicators may be present that require you to explore the possibility that one parent is putting the other parent or the child at risk of abuse. Because the abused parent might not directly raise issues of physical abuse or other forms of control, you will want to be aware of indicators of abusive behaviors that may alter the dynamics of the litigation process. This tool will explore the various behaviors that you might encounter, both from the controlling and abusive parent, and from the controlled and abused parent.

Organization of the Bench Tool

This supplemental guide and the attached bench cards follow your decision-making from the initial filing through drafting and enforcing the order. While much of the material is presented in procedural order,[1] there are also bench cards and chapters devoted to topics and issues that can arise throughout litigation.

The authors suggest that you first read the cards as an introduction to the topics addressed. This supplement, to which the cards are keyed, offers additional information and suggests further resources at the end of the guide, and in footnotes.

---

1. The stages of litigation might be named differently in various state and tribal jurisdictions. The process of filing, hearing, and decision-making are familiar enough that the procedural references made in this volume are likely to be easily adapted to the actual practice in your court.

I. Children, Abuse, and Custody

Numerous studies document the negative effects on children who are exposed to the abuse of one parent by the other. The studies provide evidence of the problems associated with their psychological, emotional, and cognitive functions, and longer-term development.[2] Children who witness violence and coercive control by one parent toward the other experience at least the same level of serious effects as those who were direct targets of the abuse.[3] The research also shows that each child's experiences, perceptions, and responses are unique. Any intervention should be tailored to that child's particular risk set and situation.[4]

Studies also support that children are at greater risk of being abused when one parent is abused by the other parent.[5] Abuse of the children, or threatened abuse, is a powerful tool of control.[6]

Abuse directly perpetrated on the child happens frequently after parental separation when the abusive parent may no longer have ready access to the other parent. This means that children are at risk post-separation even if they were never directly abused by the abusive parent previously.[7] Sometimes, abuse of a child can lead to "reconciliation" if the abused parent believes that resuming the relationship is the only way to keep the child safe.[8]

A. [§1.1] Indications that Abuse Exists in a Child's Life

As with adults who have been subjected to physical abuse or other forms of coercive control, there is no one pattern of behavior that will be observed in children who have experienced abuse, whether they were abused themselves or whether they have lived in a family where one parent has abused the other. Given the range of psychological and physical injury to a child from an abusive parent and the many elements that contribute to or delay a child's recovery, assessing risk to the child from the abusive parent is a complex process.[9] Sometimes, child behaviors can be confusing or counterintuitive. Children who have experienced abuse might

- Be better behaved with either the at-risk or the abusive parent, or, on the contrary, act disrespectfully toward him or her.
- Identify with the parent who is perceived as more powerful.[10]

---

2. For a review of these studies, see J. L. Edleson, *Children's Witnessing of Adult Domestic Violence*, 14 J. Interpersonal Violence 839-870 (1999).
3. *See, e.g.*, UNICEF, Child Protection Section, Behind Closed Doors: The Impact Of Domestic Violence On Children (2006).
4. *See generally* J. L. Edleson, VAWnet, National Resource Center, Problems Associated With Children's Witnessing Of Domestic Violence (revised).
5. Studies show that if a mother is abused, her children are at a 30-60% greater risk of being abused. *See generally* A.E. Appel & G.W. Holden, *The Co-occurrence of Spouse and Physical Child Abuse: A Review and Appraisal*, 12-4 J. Fam. Psych. 578-599 (1998); S.M. Ross, *Risk of Physical Abuse to Children of Spouse-Abusing Parents*, 20(7) Child Abuse & Neglect 589-598 (1966).
6. Please note that this tool addresses child safety in the context of private, civil legal custody cases involving abuse or coercive control by one parent over the other.
7. *See generally* L. Bancroft & G. Silverman, Assessing Risk To Children From Batterers (2002), http://www.lundybancroft.com/pages/articles_sub/JAFFE.htm.
8. *See generally* Future Interventions With Battered Women And Their Families (Jeffrey Edleson & Zvi Eisikovits, eds, Sage Publications 1996).
9. *Id.* at 5.
10. Some people may assume that a person who abuses an intimate partner would not abuse their children out of love for them. However, love is not a preventative and does not foreclose abuse. Likewise, the fact that children love an allegedly abusive parent is no indication that abuse did not occur. Children often bond with the abuser. This is sometimes referred to as "traumatic bonding." L. Bancroft & J. Silverman, The Batterer As Parent: Addressing The Impact Of Domestic Violence On Family Dynamics 39-40 (2002).

- Act lovingly toward or comfortable with an abusive parent.
- Assume the role of parent.
- Be anxious when away from the abused parent.

Those children may also

- Suffer from depression or other mental health problems.
- Self medicate with drugs or alcohol (adult victims often do the same).

B. [§1.2] The Best Interest of the Child Standard

Generally speaking, it is considered detrimental to a child and not in his or her best interest to be placed in sole custody, joint legal custody, or joint physical custody with the abusive parent.[11] The most important protective resource to enable a child to cope with exposure to abuse is a strong relationship with a competent, nurturing, positive adult—most often, that adult will be the non-abusing parent.[12] Providing for the physical, mental, and emotional safety of the child will include providing safe visitation by the abusive parent, if truly safe visitation can be arranged. You should award visitation to an abusive parent only if you find that adequate provisions for the child's and the abused parent's safety can be made, assuming that contact with the abusive parent is advised at all.[13]

At-risk parents may advocate for limited or supervised contact between the abusive parent and the child; their reasons may not be clearly or easily articulated. Any allegations of abuse, whether made by the at-risk parent or the child, should be taken seriously. Often when viewed through the lens of abuse and coercive control, though, the case comes into focus. It is important that abusive parents' access to their children occur only in safe environments or when safety of both the child and the at-risk parent can be ensured. Even if you find that the behaviors of a parent do not seem to meet the definition of "abuse" as defined in this tool, the best interest of the child standard demands that the child be placed in the custody of the more appropriate, and safer, parent.

II. Abusive Behavior and Evidence of Risk

A. [§2.1] How This Tool Defines "Abusive Behavior"

It is important to remember that abusive behavior, often described as domestic violence, is not limited to physical violence against a parent. Physical violence is generally one of

11. National Council Of Juvenile And Family Court Judges (hereinafter NCJFCJ), Family Violence: A Model State Code (hereinafter Model Code) §401 and its commentary (1994).
12. J. D. Osofsky, *The Impact of Violence on Children*, 9 Domestic Violence And Children 38 (1999).
13. NCJFCJ, Model Code §405(1) (1999).

several tactics used to maintain control over another person. For purposes of this tool, we are defining abusive behavior as "a pattern of assaultive and coercive behaviors that operate at a variety of levels – physical, psychological, emotional, financial or sexual – that one parent uses against the other parent.[14] The pattern of behaviors is neither impulsive nor 'out of control,' but is purposeful and instrumental in order to gain compliance or control."[15]

Although the definition refers to a pattern of behavior, you may consider one incident of physical violence to be abusive behavior and therefore sufficient to put a child at risk.[16] This tool may use either the term "abusive behavior" or the term "coercive or controlling behavior" to refer to similar types of behavior patterns. Abusive or coercive behavior directed at an intimate partner, no matter how defined, can create serious safety risks for children.[17]

In recent years, a growing body of social science research has addressed the wide range of violent and abusive behavior in families, documenting its severity, frequency, and injurious outcomes, and arguing about who perpetrates it and for what apparent purpose.[18] Determining the level of risk for both parent and child is a crucial first step in making custody and visitation decisions. If you have any lingering safety concerns, put protections in place that address the source of the concerns prior to ruling on custody and visitation.

B. [§2.2] How Abusive Behaviors Might Manifest Themselves in Court

Often, the abusive parent will seek to control the at-risk parent through a mixture of criticism, verbal abuse, economic control, and isolation. The abusive parent may employ an array of other tactics, many of which may be more difficult to quantify for evidentiary purposes than physical or sexual assault.[19] Abusive behaviors within a parenting relationship are complex and often go unrecognized or unidentified in legal proceedings.[20] These behaviors, too, might not be readily or easily connected to any definition of abuse during the course of custody litigation.[21] The reactions of the at-risk parent to the abuse will be unique to the individual and the circumstances. Similarly, each child will experience domestic violence in unique ways depending on a variety of factors that include direct

14. This definition is derived from NCJFCJ Clare Dalton et al., Navigating Custody And Visitation Evaluations In Cases With Domestic Violence: A Judge's Guide 8 (hereinafter Navigating Guide) (2004, revised 2006), citing Anne L. Ganley, *Understanding Domestic Violence: Preparatory Reading for Trainers* in Anne L. Ganley & Susan Schechter, Domestic Violence: A National Curriculum For Child Protective Services 1-32.
15. *Id.*
16. This statement presumes the incident of physical violence by the abusive parent, and not an incident of resistive violence by the at-risk parent.
17. *See* §1.1 for a discussion of the impact of abusive behavior on children, whether or not the children were the intended targets of the controlling and violent behavior.
18. Peter G. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 Fam.Ct. Rev. 500 (2008).
19. Bancroft & Silverman, *supra* note 7 (citing J. Herman, Trauma And Recovery: The Aftermath Of Violence (Basic Books, New York 1992).
20. *See* L. Frederick & J. Tilley, Battered Women's Just. Project, Effective Interventions In Domestic Violence Cases: Context Is Everything (2001) at http://www.bwjp.org/documents/context%is%everything.htm.
21. Even the attorney representing the abused parent might not recognize domestic violence, especially where there has been little or no physical abuse.

physical abuse of the child, his or her gender and age, the time since exposure to violence, and his or her relationship with adults in the home. Some children may show no apparent negative developmental problems despite witnessing repeated violence.[22]

You may observe behavior in court that may not be readily identifiable as evidence of risk. Abusive parents and at-risk parents may behave in unpredictable ways depending on the circumstances of each case.[23] Some at-risk parents as a survival technique will minimize or deny that they have been abused, even when evidence of abuse is overwhelming. Both parents might minimize or deny the impact of the violence on the child. Or, the at-risk parent may express fear that the abusive parent will hurt the children, even if there is no evidence of prior child abuse.

C. [§2.3] Courtroom Demeanor of the Abusive Parent

As described elsewhere, there is no one pattern of behavior that you will observe in either the abusive parent or the at-risk parent. There are some behaviors, however, that indicate disrespect toward the other parent. These behaviors should raise red flags for you to determine whether they result from a pattern of control.

Often abusive parents present well, as they are skilled at maintaining control. An abusive parent might

- Believe or claim that the other parent is stupid, unsophisticated, or inflexible.
- Anger easily.
- Behave in an arrogant or superior manner.
- Attempt to present as the true victim in the relationship.
- Appear vulnerable or otherwise engender empathy with the court or with third parties.
- Be unwilling to understand another's perspective.
- Expect the child to meet the parent's needs.
- Advocate or adhere to strict gender roles.
- Patronize the other party, counsel, and even the court.
- Attempt to create an alliance with you.
- Minimize, deny, blame others for, or excuse inappropriate behavior.

This controlled courtroom presence of the abusive parent may contrast with the at-risk parent's behavior.

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22. Edleson, *supra* note 4, at 7.
23. Frederick & Tilley, *supra* note 20.

D. [§2.4] Courtroom Demeanor of the At-Risk Parent

The at-risk parent may not present as well and might

- Have difficulty presenting evidence for any number of reasons: cognitive impairments resulting from abuse, fear, or a conviction that she[24] will not be believed.
- Demonstrate inappropriate affect resulting from fear, depression, post-traumatic stress disorder, or other response to abuse.
- Be extremely anxious and unfocused in the presence of the abusive parent.
- Be aggressive or angry when testifying.
- Show signs of distress when listening to the other parent's testimony.
- Appear numb, unaffected, or disinterested.

E. [§2.5] Distinguishing the "High-Conflict" Case

Both legal and mental health professionals acknowledge the relevance of parent-to-parent abuse and coercive control in determining the best interest of the child.[25] Family law cases involving evidence of abuse may be (and in fact, often are mistakenly) labeled "high-conflict." Abuse cases may have high-conflict characteristics, but they require a different set of considerations in order to promote safety for the at-risk parent and child.

High-conflict cases are those intense and protracted disputes that require considerable court and community resources during litigation and possibly after.[26] They are distinguished by mutual mistrust of each partner, poor impulse control, and cycles of reaction and counter-reaction which further erode the possibility of trust.[27] In cases with abuse, on the other hand, one parent exhibits attitudes and behaviors designed to exert inappropriate control over the other parent.[28] To add to the confusion, there may be responsive violence or protective behaviors by the victim parent, which may make the case appear to be high-conflict on the surface.

[§2.6] Remember: Abusive behaviors occur in all economic levels. Low-income at-risk parents may not have access to the resources they need in order to safely leave an abusive situation with their children. Parents who experience abuse in middle- and upper-class households may have different hurdles to overcome. They may be discredited by the abusive parent who may have special status in the business or local community. In addition, wealth and education can be confused with the ability to leave an abusive situation. The reality is that control is maintained by creating fear and is not related to

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24. Although the majority of victims of abuse and coercive control are women, this tool and the accompanying cards would apply equally where the at-risk parent is male. *See* Bureau Just. Stat., U.S. Dep't Just., Intimate Partner Violence, 1993-2001 1 (2003), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/ivp01.pdf (finding that about 85% of victimizations by intimate partners in 2001 were against women).
25. Peter G. Jaffe, Claire V. Crooks & Hon. Frances Q.F. Wong, *Parenting Arrangements After Domestic Violence: Safety as a Priority in Judging Children's Best Interest*, 6 J. Ctr Families, Child. & Cts. 81, 83 (2005), *citing* Janet R. Johnston, *High-Conflict Divorce*, 4 Future of Child. 165 (1994).
26. *Id.*
27. *Id.* at 84.
28. *Id.*

wealth, although many at-risk parents may not have independent access to resources within the family while in the abusive situation, even in wealthy families.

III. Analyzing the Evidence

Of course, one of a judge's primary functions is to consider the evidence, determine its credibility, and find facts based upon his or her assessment of that evidence. Often in family law matters, the temptation is to view competing or opposing evidence of abuse as "he said/she said." This perspective can result in ruling against the parent who has the burden of proof on the theory that without additional testimony to tip the scales, the court lacks sufficient evidence to rule otherwise.

The abusive parent benefits from that perspective. Often that parent has invested effort in convincing the at-risk parent that she will not be believed if she discloses the abusive behavior. The coercive parent's attempts to influence you in order to discount the other parent's testimony about the abuse is a method of manipulation aimed at you, as well as the other parent.

As a judicial officer, familiarity with the dynamics of abusive behavior and coercive control will enable you to assess the testimony and other evidence, and create a plan that is in the best interest of the children.[29]

A. [§3.1] Cross-Allegations

Cross-allegations of abuse are not uncommon.[30] Sometimes, it is the abusive parent who raises issues of abuse in an effort to discredit the at-risk parent. To sort through this type of testimony,

- Determine whether any alleged physical act was part of a pattern of emotional, physical, financial, or sexual abuse.
- Determine whether any alleged physical acts were done in response or in reaction to other forms of abuse and control, including financial control, isolation, physical violence, sexual abuse, or humiliation.[31]

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29. For an excellent outline of abusive behaviors, *see* NCJFCJ, National Judicial Institute On Domestic Violence (hereinafter NJIDV), Understanding the Victim.
30. It is important to distinguish between levels of harm as well as to determine which parent engaged in a pattern of controlling behavior. Statistically, the mother is at far greater risk of being abused by the child's father than he is by her. *See* Bureau Just. Stat., U.S. Dep't Just., Family Violence Statistics: Including Statistics On Strangers And Acquaintances 1 (2005), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf (finding that females were 84 percent of spouse abuse victims, 86 percent of victims of abuse by a boyfriend or girlfriend, and 58 percent of family murder victims). *See also* Patricia Tjaden & Nancy Thoennes, Full Report Of The Prevalence, Incidence, And Consequences Of Violence Against Women iii-61, iv (2000) (finding that women (64 percent) were significantly more likely than men (16.2 percent) to report being raped, physically assaulted, and/or stalked by a current or former intimate partner and that women who were raped or physically assaulted by a current or former intimate partner were significantly more likely to sustain injuries than men who were raped or physically assaulted by a current or former intimate partner) as cited in NCJFCJ, Clare Dalton Et Al., Navigating Guide 7-9 ((2004), revised 2006).
31. For an excellent discussion on the importance of differentiating types of violence in custody cases, see Peter G. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence; Toward a Differentiated Approach to Parenting Plans,* 46 Fam. Ct. Rev. 500 (2008).

- Consider whether one parent inflicted more harm.
- Consider the impact of the alleged abusive behavior on the other parent or the child.
- Consider a parent or child's fear of the other parent.

The more familiar you become with the dynamics of coercive control, the easier it will become to analyze the evidence in order to determine whether a pattern of abusive behavior is present.

B. [§3.2] Using Third-Party Information for Decision-Making

In the contested case, there may be sources of information that you will consider admitting into evidence, such as the reports of custody evaluators or expert witnesses. Determining whether to admit the reports or testimony into evidence and the extent to which you rely on them must be carefully considered, especially in cases where the safety of a child or a parent is at issue.[32] A good test of the source's expertise is whether any recommendations take into account the need to protect the physical and emotional safety of the child and the at-risk parent, and whether the recommendations offered make full use of the range of available alternatives.[33] While you may have one or more expert recommendations regarding the child's best interest, the ultimate responsibility for decision-making on issues of custody and visitation of course lies with you.

C. [§3.3] A Word of Caution about Parental Alienation[34]

Under relevant evidentiary standards, the court should not accept testimony regarding parental alienation syndrome, or "PAS." The theory positing the existence of PAS has been discredited by the scientific community.[35] In *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999), the Supreme Court ruled that even expert testimony based in the "soft sciences" must meet the standard set in the *Daubert* case.[36] *Daubert*, in which the court re-examined the standard it had earlier articulated in the *Frye*[37] case, requires application of a multi-factor test, including peer review, publication, testability, rate of error, and general acceptance. PAS does not pass this test. Any testimony that a party to a custody case suffers from the syndrome or "parental alienation" should therefore be ruled inadmissible and stricken from the evaluation report under both the standard established in *Daubert* and the earlier *Frye* standard.[38]

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32. For an excellent discussion on admitting the reports of custody evaluators and expert testimony, *see generally* NCJFCJ Clare Dalton et al., Navigating Guide.
33. *Id.*
34. This section, including the footnoted material was excerpted from Navigating Guide at 24-25.
35. According to the American Psychological Association, " ... there are no data to support the phenomenon called parental alienation syndrome ..." Am. Psychol. Ass'n, Violence And The Family: Report Of The American Psychological Association Presidential Task Force On Violence And The Family 40, 100 (1994) (stating that custody and visitation disputes appear to occur more often in cases in which there is a history of domestic violence).
36. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).
37. *Frye V. U.S.*, 293 F. 1013 (D.C. Cir. 1923).
38. These are federal standards, but many states adhere to them at least generally and should still exclude any proffered evidence of PAS.

The discredited "diagnosis" of PAS (or an allegation of "parental alienation"), quite apart from its scientific invalidity, inappropriately asks the court to assume that the child's behaviors and attitudes toward the parent who claims to be "alienated" have no grounding in reality. It also diverts attention away from the behaviors of the abusive parent, who may have directly influenced the child's responses by acting in violent, disrespectful, intimidating, humiliating, or discrediting ways toward the child or the other parent. The task for the court is to distinguish between situations in which the child is critical of one parent because they have been inappropriately manipulated by the other (taking care not to rely solely on subtle indications), and situations in which the child has his or her own legitimate grounds for criticism or fear of a parent, which will likely be the case when that parent has perpetrated domestic violence. Those grounds do not become less legitimate because the abused parent shares them, and seeks to advocate for the child by voicing his or her concerns.

IV. Respectful Interaction and Safety in Custody Cases with Child Safety Issues

A. [§4.1] Respectful and Safe Interaction

To encourage **respectful interaction** during the course of litigation, you may wish to

- Insist that the attorneys treat all parties with respect. If the abusive parent's attorney is allowed to be disrespectful toward the opposing counsel, the opposing party, or any witnesses, that behavior serves to empower the abusive parent and can thereby increase the safety threat to the at-risk parent.
- Because the at-risk parent may need additional time to answer questions, insist that the attorneys give each party adequate time to respond.
- Insist that counsel maintain a respectful distance from the witness.
- Warn the parties and counsel against the use of sarcastic or other disrespectful remarks or tone.
- Impose sanctions for the continued use of disrespectful tone, remarks, or tactics.
- Watch out for and intervene to stop any controlling non-verbal behavior by one parent toward the other.
- If one or both parents are *pro se*, require all questions and answers in court to be funneled through you.

To ensure **safety** during the course of litigation when you suspect that one parent has been controlled by the other parent, you may wish to

- Inform security that the suspected abusive parent must be kept a safe distance from the

9TH CIRCUIT - FAMILY DIVISION - MERRIMACK

CASE SUMMARY

CASE NO. 458-2012-DV-00019

In the Matter of Becky Ranes v. Muni Savyon	§	Location:	9th Circuit - Family Division - Merrimack
	§	Filed on:	03/30/2012
	§	Case Number History:	
	§	Protective Order Number:	4581210019

CASE INFORMATION

Case Type: **Domestic Violence Petition**

Case Status: **08/17/2021 Destroyed**

DATE	CASE ASSIGNMENT	
	Current Case Assignment	
	Case Number	458-2012-DV-00019
	Court	9th Circuit - Family Division - Merrimack
	Date Assigned	04/02/2012

PARTY INFORMATION

		Attorneys
Plaintiff	**Ranes, Becky E.** *** Confidential Address ***	**Bailinson, David I., ESQ** *Retained* 000-000-0000(F) 000-000-0000(W) *Bailinson Law PLLC* *PO Box 4203* *Concord, NH 03302-4203* bailinsonlaw@gmail.com
Defendant	**Savyon, Muni** *172 Grove Street* *Manchester, NH 03102*	**Shanelaris, Catherine E., ESQ** *Retained* 603-594-3786(F) 603-594-8300(W) *Shanelaris & Schirch PLLC* *35 E Pearl St* *Nashua, NH 03060* cathy@sandslawfirm.com
Guardian ad Litem	**LaRocque, George** *46 Central Street* *Hudson, NH 03051*	

DATE	EVENTS & ORDERS OF THE COURT	INDEX
03/30/2012	Domestic Violence Petition	*Index #1*
03/30/2012	Domestic Violence Temporary Order (Judicial Officer: Ryan, Michael J)	*Index #2*
03/30/2012	Order (Judicial Officer: Ryan, Michael J) *Plf. is awarded custody of the minor child. "This order supercedes existing parenting plan."*	*Index #3*
03/30/2012	Order (Judicial Officer: Ryan, Michael J) *Matter is transferred to Merrimack Family Division to be heard by Family Division Master of Judge.*	*Index #4*

Date	Event	Index
03/30/2012	Other *Fax verification to: NCIC, to PD's. In hand to: Plf.*	*Index #5*
03/30/2012	**Service** Savyon, Muni served 03/30/2012	
04/02/2012	Other *Case transferred to 9th Circuit-Family Division-Merrimack.*	*Index #6*
04/04/2012	Return of Service	*Index #7*
04/06/2012	Appearance Party: Attorney Bailinson, David I., ESQ *David I. Bailinson, Esq.*	*Index #8*
04/23/2012	*CANCELED* **Final Hearing Domestic Violence**	
05/04/2012	*CANCELED* **Final Hearing Domestic Violence**	
05/04/2012	**Final Hearing Domestic Violence**	
05/04/2012	Domestic Violence Final Order Granted (Judicial Officer: Kinghorn, Clifford R, JR)	*Index #9*
05/04/2012	DVP Transmittal Letter/Fax *to pd*	*Index #10*
05/04/2012	DVP Transmittal Letter/Fax *to pd*	*Index #11*
05/04/2012	DVP Transmittal Letter/Fax *to NCIC*	*Index #12*
05/04/2012	Return of Service *served in hand at Court*	*Index #13*
05/04/2012	Appearance *Atty Mello for Resp*	*Index #14*
05/04/2012	**Granted** (Judicial Officer: Kinghorn, Clifford R, JR)	
05/18/2012	Other (Judicial Officer: Kinghorn, Clifford R, JR) *Request for copy of CD of DV hearing - same issued, mailed to Public Defender on May 23, 2012.*	*Index #15*
05/25/2012	Motion Party: Attorney Mello, Raymond R., ESQ *Motion for Further Orders*	*Index #16*
06/07/2012	Objection Party: Attorney Bailinson, David I., ESQ *to motion for further orders*	*Index #17*
07/05/2012	**Further Hearing** *Hearing on Motion and Objection*	
07/05/2012	Agreement (Judicial Officer: Kinghorn, Clifford R, JR) Party: Attorney Mello, Raymond R., ESQ; Attorney Bailinson, David I., ESQ *Respondent shall have an aanger management eval. done by Paula charles. ... all other orders remain in effect.*	*Index #18*
07/05/2012	Approved/Ordered by Court (Judicial Officer: Kinghorn, Clifford R, JR)	
08/31/2012	Other *Attorney Mello to file withdrawal over weekend - Katherine Shanelaris will be appearing on case*	*Index #19*
09/03/2012	Withdrawal	*Index #20*

Date	Event	Index
	Party: Attorney Mello, Raymond R., ESQ *Raymond R. Mello, Esq. Withdraws as counsel for Defendant*	
09/04/2012	**Review Hearing**	
09/04/2012	Appearance Party: Defendant Savyon, Muni *Catherine Shanelaris, Esq. for Defendant.*	*Index #21*
09/04/2012	Agreement (Judicial Officer: Kinghorn, Clifford R, JR) *Sessions with James Foster*	*Index #22*
09/04/2012	Granted (Judicial Officer: Kinghorn, Clifford R, JR)	
09/11/2012	Other *visitation report from northeast counseling*	*Index #31*
10/01/2012	Motion to Vacate Party: Attorney Bailinson, David I., ESQ *Plaintiff's*	*Index #23*
10/09/2012	Objection Party: Attorney Shanelaris, Catherine E., ESQ *to motion to vacate and cross-motion to bring forward and modify agreement*	*Index #24*
11/07/2012	Other *replication to objection and cross motion*	*Index #25*
12/05/2012	**Hearing** (Judicial Officer: Kinghorn, Clifford R, JR) *Pending DV motions*	
12/05/2012	Proposed Order Party: Attorney Shanelaris, Catherine E., ESQ *on motions hearing*	*Index #26*
12/05/2012	Report *observation form*	*Index #27*
12/26/2012	Other Order (Judicial Officer: Kinghorn, Clifford R, JR) *Order on Plaintiff's Motion to Vacate and Defendant's Objection and Cross-Motion to Bring Forward and Modify Agreement*	*Index #28*
12/26/2012	Order Appointing GAL (Judicial Officer: Kinghorn, Clifford R, JR)	*Index #29*
01/18/2013	Appearance *Attorney George R. LaRocque, Jr. as GAL*	*Index #30*
02/12/2013	Motion to Extend Deadlines Party: Guardian ad Litem LaRocque, George *preliminary report deadline*	*Index #31*
02/25/2013	Order Issued (Judicial Officer: Kinghorn, Clifford R, JR)	
03/14/2013	Report *confidential report*	*Index #32*
03/25/2013	Motion to Clarify Party: Attorney Bailinson, David I., ESQ	*Index #33*
03/25/2013	Motion Party: Attorney Bailinson, David I., ESQ *Motion to extend for good cause pursuant to RSA 173-B:5, VI*	*Index #34*
04/01/2013	Response Party: Attorney Shanelaris, Catherine E., ESQ	*Index #35*

to motion for clarification

Date	Entry	Index
04/01/2013	Objection Party: Attorney Shanelaris, Catherine E., ESQ *to motion to extend for good cause*	*Index #36*
04/05/2013	Request for Sound Recording Party: Plaintiff Ranes, Becky E. *12/5/12 Hearing (CRK- CR3)*	*Index #37*
04/19/2013	Assented to Motion to Continue Party: Attorney Shanelaris, Catherine E., ESQ *4/29/13 hearing*	*Index #38*
04/25/2013	Granted	
04/29/2013	*CANCELED* **Motion Hearing**	
05/01/2013	DVP Transmittal Letter/Fax *to NCIC of assented to motion to continue*	*Index #39*
05/01/2013	DVP Transmittal Letter/Fax *to Manchester PD of assented motion to continue*	*Index #40*
05/01/2013	DVP Transmittal Letter/Fax *to Plaintiff's pd of assented motion to continue*	*Index #41*
05/01/2013	Motion Party: Guardian ad Litem LaRocque, George *assented to motion to approve GAL stipulation*	*Index #42*
05/16/2013	Motion to Extend Deadlines Party: Guardian ad Litem LaRocque, George *partially assented to motion to extend preliminary report deadline*	*Index #43*
05/20/2013	Other Party: Attorney Bailinson, David I., ESQ *assent to extend GAL's report deadlines*	*Index #44*
06/04/2013	Granted (Judicial Officer: Stephen, Robert S)	
06/19/2013	Assented to Motion to Continue Party: Guardian ad Litem LaRocque, George *7/09/13 hearing*	*Index #45*
06/20/2013	Guardian Ad Litem Report	*Index #46*
07/09/2013	*CANCELED* **Hearing on Motion(s)**	
07/23/2013	**Motion Hearing**	
08/27/2013	**Case Status Hearing**	
08/27/2013	**Status Conference**	
04/09/2014	Withdrawal Party: Guardian ad Litem LaRocque, George *GAL*	*Index #47*

TARGET DATE	TIME STANDARDS

DATE	FINANCIAL INFORMATION

9TH CIRCUIT - FAMILY DIVISION - MERRIMACK

CASE SUMMARY

CASE NO. 458-2012-DV-00019

Plaintiff Ranes, Becky E.	
Total Charges	52.50
Total Payments and Credits	52.50
Balance Due as of 10/7/2022	**0.00**

Kayden's Law in VAWA Signed into Law

WASHINGTON, D.C., March 16, 2022 -Signed by President Biden, Keeping Children Safe from Family Violence, or "Kayden's Law" for short, in VAWA is the first child safety federal law that incentivizes states to adopt private, child safety legislaton to help end our family court crisis. Our thanks to Congressman Brian Fitzpatrick (PA-01) for his bill; for Danielle Pollack and Joan Meier working to write this bill; and for Congressmembers Sen. Feinstein, Sen. Durbin, Sen. Ernst and Sen. Murkowski for leading VAWA (and including Kayden's Law) as well as all who signed on and supported this bill.

• What is Keeping Children Safe from Family Violence or "Kayden's Law"

- Kayden's Law is named after Kayden Mancuso. Her protective parent, Kathy Sherlock, fought to protect her from her abusive father with a documented history of violence and mental instability. The courts refused to protect Kayden with full protective orders. On an unsupervised visit with her father, Kayden, only seven years old, was violently murdered by him on August 5, 2018.

Kathy immediately starting advocating for child safety at the state level where Danielle Pollack was already working to introduce federal and state level child safety laws. Together with her colleague Joan Meier at The National Family Violence Law Center at GW, Danielle and Joan helped Congressman Brian Fitzpatrick introduce a new bill that was based on the Pennsylvania state bill they wrote with Richard Ducote for PA State Senators Santarsiero and Baker as well as Representative Davis.

Kayden's Law was added into VAWA, passed in Congress with the Omnibus package, and signed by President Biden on March 16, 2022.

The Keeping Children Safe From Family Violence Act or "Kayden's Law" in VAWA, incentivizes states to ensure that their child custody laws adequately protect at-risk children by:

1. Restricting expert testimony to only those who are appropriately qualified to provide it. Evidence from court-appointed or outside professionals regarding alleged abuse may be admitted only when the professional possesses demonstrated expertise and experience in working with victims of domestic violence or child abuse, including child sexual abuse.

2. Limiting the use of reunification camps and therapies which cannot be proven to be safe and effective. No “reunification treatment" may be ordered by the court without scientifically valid and generally accepted proof of the safety, effectiveness and therapeutic value of the particular treatment.

3. Providing evidence-based ongoing training to judges and court personnel on family violence subject matter, including: (i) child sexual abuse; (ii) physical abuse; (iii) emotional abuse; (iv) coercive control; (v) implicit and explicit bias; (vi) trauma; (vii) long and short-term impacts of domestic violence and child abuse on children; and (viii) victim and perpetrator behaviors.