

April 24, 2007

The Honorable David Cote, Chair
NH House Judiciary Committee
96 W Hollis Street
Nashua, NH 03060-3146

The Honorable Mary Gile, Chair
Children and Family Law Committee
35 Penacook St
Concord, NH 03301-4518

Re: David W. Johnson

Dear Representatives Cote and Gile,

I am submitting to you a lengthy hand-written document prepared by my client, David W. Johnson concerning the custody proceedings in the Derry Family Division. I have written to both committees by email before about this case. My client remains in jail for failure to pay back child support of \$12,000 - money he does not have to pay. He was never able to make child support payments because he had custody of his daughter for more than 1/2 of the time for most of the time since his divorce. He more fully explains what happened to his job, which he lost as a result of another dumb decision on custody of the Derry Family Division years ago. If he gets out of jail on this contempt charge, he is still liable for contempt in the future because the court denied a motion for "Guidelines Child Support" over the weekend.

I am also submitting a copy of a letter written by Nurse Holt of Foundation Pediatrics in November of 2003. Since that letter, Master Cross gave medical decision-making authority to the mother, Jennifer Johnson. The child, Marissa, is now on micro-furidantin as a prophylactic antibiotic as a result of the medical decision-making authority being given to the mother. It is a very strong and harsh antibiotic, and my client is naturally extremely concerned about it.

David remains in jail, in violation of the U.S. Supreme Court holding in Hicks v. Feiock, 485 U.S. 824 (1988), which was handed to Judge Sadler at the first bail hearing. I'm going to try to put together an appeal of his Writ of Cert to the Rockingham Superior Court to the NH Supreme Court, as well as denial of his Petition for Writ of Habeas Corpus received just this weekend, but I doubt either appeal will succeed. I've learned over the years that above-all, New Hampshire Courts will protect any and every decision of judges unless they're practically

invited to review the decision by the judge- more so if the action was taken in clear violation of case law precedent. David has no way to get out of jail at this point. He does not have the money to pay, and his "sentence" is therefore indeterminate. I expect at this point it will take more than a year to get him out of jail, and perhaps much more. You can be sure if the mother neglects the daughter's health as expected, she will wind up in DCYF custody while my client rots in jail. While the father was out of jail and had custody most of the time, he could keep her at least healthy enough to avoid DCYF.

I also refer you also to the NH Supreme Court decision handed down in Petition of Jeffrey Gray, where the NH Supreme Court refused to order the Salem Family Division to refuse to recognize a Maine Custody Order in probate court handed down between the original NH Supreme Court decision in In the Matter of Jeffrey G. and Janette P., 1/27/06, <http://www.courts.state.nh.us/supreme/opinions/2006/jeffr006.pdf>. The Supreme Court denied our Motion For Finding of Contempt when the Salem Family Division refused to hold the remand hearing on the case as ordered to do in the January 27, 2006 Supreme Court OPINION and instead 'ceded" jurisdiction to Maine. The Supreme Court's subsequent denial of Jeffrey Gray's second appeal was a 3JX ORDER issued in November of 2006. <http://www.courts.state.nh.us/supreme/3jx/2006/2006-0349.pdf>

I also will point to the OPINION recently printed by the NH Supreme Court on the right of non-charged parents to counsel in abuse and neglect cases . (In Re: Father 2006-360). I appealed my client's case on numerous grounds, including the fact that the father was never served with the Petition for Neglect, the Preliminary Order, the Adjudicatory Order, the Dispositional Order or the Order to Complete a Financial Affidavit for Hillsborough County Department of Health and Human Services. Judge Crocker in that case held him in contempt for violating an order she never sent him the day she received the Motion for Contempt from Hillsborough County.

The NH Supreme Court Opinion stated that the father's liberty interests were not sufficient to qualify him for a court-appointed attorney, despite the lengthy list of appeal issues - including the fact that DCYF told him that he was required to submit to an Interstate Compact Home Study prior to getting custody of his daughter, and did not tell him about the Bill F. Hearing process, despite being told to do so by the court. That opinion was issued on March 16, 2007. It is on line at <http://www.courts.state.nh.us/supreme/opinions/2007/fathe029.pdf>. The NH Supreme Court bifurcated the appeal, ordered me to only brief the issue of right to an attorney, and so far has not issued a ruling on whether or not it will even take the other issues in the case. The wording of their opinion appears to indicate that they don't intend to take the other issues - since the father in this case had an attorney for most of the proceedings - the other denial of due process issues are far more important than denial of the right to an attorney. Denial of legal service of the petition is hardly a minor breach of due process, and the NH Supreme Court has so far ignored even issuing a decision on whether or not they'll take the other issues on appeal for more than a year. I've enclosed a list of the issues involved in the father's case. Because the NH Supreme Court itself goes beyond the intent of the confidentiality provisions of RSA 169-C:25, and seals the juvenile cases, I cannot send you the actual documents from the case, even

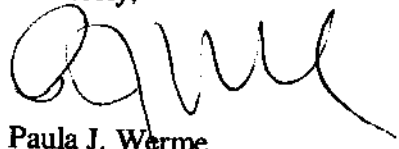
redacted.

Certainly Judge Crocker is guilty of sheer arrogance. She excoriated my client in court for flaunting the orders of her court - there was no question it was his action in taking his daughter to PA that drove her to find him "unfit." Given that it was her fault in the first instance that he wasn't served, that the "fit parent" hearing process was not explained to him, and that she permitted DCYF to lie to him to force him to go through a lengthy interstate compact placement study that resulted in complete destruction of the family. This case should have ended when the father showed up in court to retrieve his daughter in the first instance. It would have saved the state untold tens of thousands of dollars, not to mention a family.

I truly believe that no action short of a Bill of Address by the legislature will put the judicial branch on notice that they are expected to follow the constitution, case precedent and statutory law in this state. The worse the denial of due process - the more the courts ignore the precedential case law or even statutory law - the more inclined the NH Supreme Court is to uphold the courts' decisions as "within the discretion of the court."

I believe that either Judge Sadler in the David Johnson case, Judge Korby in the Jeffrey Gray case, and Judge Crocker are probably equally worthy of the time this body might put into a Bill of Address. I do hope you consider the issues I raise carefully.

Sincerely,



Paula J. Werme

cc: file