

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

DERRY FAMILY DIVISION

DOCKET # 2000-M-0407

IN THE MATTER OF
JENNIFER JOHNSON AND DAVID JOHNSON

MOTION FOR RECUSAL OF JUDGE SADLER AND MASTER CROSS

NOW COMES David W. Johnson, Respondent in the above-captioned case, and respectfully moves this honorable Court for Judge Sadler and Master Cross to RECUSE herself and himself respectively in the matter. In support of said MOTION, Respondent states the following:

1. Prior to the hearing on March 26, 2007 regarding bail, there was a question in undersigned attorneys mind about whether or not Judge Sadler had seen the proposed findings of facts and rulings of law submitted to this Court concerning the fact that the Respondent did not have the money to comply with the ORDER, and therefore no finding of civil contempt was appropriate because he could not purge himself of civil contempt.
2. There was no question in undersigned's mind that Master Cross had been informed of the Proposed Findings of Facts and Rulings of law because they were submitted to him.
3. After the hearing on March 26, 2007, recorded by undersigned attorney exercising her client's First Amendment and Article 22 rights for purposes of obtaining proof that the Court knows the difference between civil contempt and criminal contempt, and following her motion to vacate the finding of civil contempt, undersigned is convinced in her mind that this Court does know the difference between civil and criminal contempt.
4. Undersigned is further convinced that this court does know that the Respondent does not have the money to comply with the court ORDER; and that if it did not knowingly make findings to the contrary in its first order of CAPIAS, that it certainly made its findings knowing that the Respondent cannot comply with the ORDER TO PAY in its bail ORDER of March 26, 2007.
5. As a result of the above, undersigned has a good-faith belief that this Court made orders knowing that the facts did not substantiate its original findings, **namely that the Respondent could comply with the ORDER to pay \$8000 to avoid the issuance of a WRIT OF CAPIAS or to purge himself of civil contempt**, and because undersigned attorney knows that the court has absolutely been informed of US Supreme Court law stating that it is illegal to jail fathers for failure to pay child support when they do not have the funds to comply with the order. Because the Court has been asked to vacate its finding of contempt based on that case law, the Court is on notice that its implicit finding is that the father has the current ability to comply is based on nothing in the record. Undersigned will therefore be required to perform her duty under NH Rule of Professional Conduct 8.3 (b), and refer the matter to the Judicial Conduct Committee.
6. If in fact the court still does not know the difference between civil and criminal contempt

after having the law presented to it, clearly there is still a sound basis for a report to the Judicial Conduct Committee because judges are required to be competent in the law. Although the final decision on judicial misconduct is obviously the province of the Judicial Conduct Committee, undersigned believes that there is no excuse for the not knowing the law that has been handed to the Court or taking it into consideration in its order.

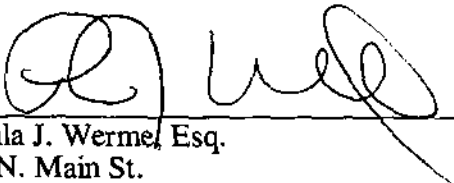
7. The Court's citation of the fact that the New Hampshire Supreme Court upheld the child support order is insufficient to support its bail order of March 28, 2007, because the issue of whether the Respondent can comply with the ORDER was not a part of the NH Supreme Court appeal.
8. This Court's citation of the NH Supreme Court ORDER is also insufficient in that undersigned cited in the hearing of March 26, 2007 **that this Court never complied with the rules for making support orders, namely considering the statutory factors, or even requiring submission of Child Support Guideline Worksheets.**
9. Undersigned can understand that a formerly pro se Respondent such as her client would be ignorant of the court rules, but it stretches credulity to believe that the Court or Attorney Ross were not aware of them. In the Matter of Rhodenburg, Docket # 2002-380, March 17, 2003. The original order of support cannot be sustained as being within the sound discretion of the master or judge absent any compliance with court rule. Since this issue was not directly appealed to the NH Supreme Court, but was clearly raised in the hearing of March 26, 2007, the Court's citation to the NH Supreme Court ruling in this case as support for upholding its finding of civil contempt is erroneous. The elements of civil contempt do NOT include an element that the NH Supreme Court upheld the order on other grounds.

WHEREFORE, Respondent respectfully requests the following relief:

- A. That Judge Sadler and Master Cross recuse themselves from further proceedings in the matter.
- B. For other and such relief as may be just.

Respectfully submitted,

March 29, 2007

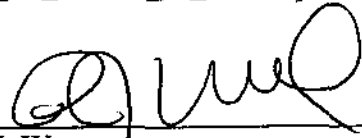


Paula J. Werme, Esq.
83 N. Main St.
Boscawen, NH 03303
753-9384

CERTIFICATE OF SERVICE

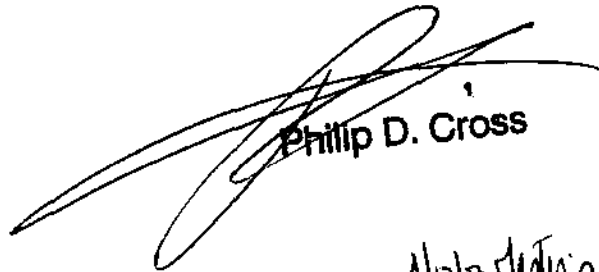
I hereby certify that a copy of this pleading has been forwarded to L. Jonathan Ross, Esq., Wiggin & Nourie, PO Box 808, Manchester, NH 03105, and to the NH Office of Child Support Enforcement, Salem District Office, 154 Main Street, Suite 1, Salem, NH 03079-3180. In addition, courtesy copies are being provided to the Administrative Office of the Family Division, the NH Executive Council. Electronic copies will be made available to the entire NH legislature via posting on the World Wide Web,

March 29, 2007



Paula J. Werme

4/10/07 Rec: Motion to recuse Master Cross is denied.


Philip D. Cross

4/12/07 motion re.
approved + ordered.
Sadler

Lucinda V. Sadler