MFM [MS-0398.039.000.010]

Monica Vogelmann
Attorney at Law
2667 Camino del Rio South
Suite 226
San Diego, California 92108
(619) 291-0552

RECEIVED
APR 20 1990
Ans'd.....

April 17, 1990

Pat Davis
County Counsel's Office
Appellate Divison
4955 Mercury Street
San Diego, California 92111

Re: San Diego Daily Transcript Article

Dear Ms. Davis,

As I indicated in our phone conversation on April 17, 1990, I wished to respond in writing to your comments regarding dependency panel attorneys having "a real vested interest. They could increase their numbers and increase their billable hours."

I am extremely offended by your implication that panel attorneys set trials in order to increase the number of attorneys and to increase the billable hours. While such remarks may be excused from a layman unfamiliar with the issues at stake in dependency matters, such remarks are very disappointing when put into print by a professional who should know better.

My clients are entitled by the Constitutions of both the United States (U.S.) and California to contest the governmental interference in the fundamental right to parent their children. These guaranteed constitutional rights protect all of us in the U.S. from social engineering and other atrocities such as took place in Nazi Germany.

Frankly, the cost to the taxpayers could be significantly reduced if your client, the Department of Social Services (D.S.S.), would exercise better discretion and not file some of the frivolous and poorly pled petitions which my clients have contested.

My clients, whether minors or parents, having feelings, needs, and concerns which are ignored by the bureaucracy of D.S.S. The bottom line is that D.S.S. makes many mistakes and has in some instances devastated the lives of the families and children which it is supposed to protect. However, D.S.S. is never held accountable because of the nature of the giant

bureaucracy. Thus, the only protection available to the family is the right to present evidence and to confront the evidence against them.

The real issue in Malinda S. is due process, specifically the right to confront and cross examine adverse evidence. Historically, the right to confront and cross examine evidence has been one of the fundamental rights afforded to US citizens. The rationale behind this right is to ensure that **reliable** evidence is presented to the trier of fact, especially when the governmental action is to interfere with a fundamental right of humanity, such as the right to parent.

The evidence contained in social studies must be reliable. If the government wants to have statements by witnesses before the court, the historically proper vehicle is to have the witness before the court and to have the witness available to be cross examined by the other parties.

This concept of the inadmissability of hearsay which does not fall into one of the many exceptions is not new, nor is it created by the panel dependency attorneys. In fact, this concept is applied in every courtroom in which the government wishes to interefere with a fundamental right. The stake in dependency cases is people's children. People can permenantly lose all rights to raise or even visit their own flesh and blood as a result of the government action. If you were in that position, you would want your rights protected.

Your statements imply that any dependency attorney who is concerned about the integrity of the Constitution and who forces the government to protect the rights of its citizens is merely motivated by a desire to increase the billable hours. Such a contention is absurd. I and my colleagues work the maximum number of hours due to our massive caseloads. A trial merely eats into that finite amount of time, and the work which I would otherwise do (such as returning phone calls) simply does not get done.

I have never set a frivolous trial, nor have I ever set a trial in order to increase my billing, nor do I know of any attorney who has engaged in such behaviour. That type of behavior is fraudulent and unethical. I demand an apology from you in writing for your remarks about the dependency panel.

Sincerely,

Monica Vogelman

Monica Vogelmann

MV/sf
cc: JJBA
Honorable Napoleon Jones
Board of Supervisors
Pamela Wilson

SAN DIEGO COUNTY
JUVENILE JUSTICE BAR ASSOCIATION

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Pat Davis
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4955 Mercury Street
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Re: San Diego Daily Transcript Article

Dear Ms. Davis,

On behalf of the membership of the Juvenile Justice Bar Association, the Executive Board demands a written apology from you for the statements made by you and printed in the San Diego Daily Transcript.

We as a whole are surprised and angered by your implication that panel dependency attorneys set trials in order to increase the number of attorneys and to increase the billable hours. The membership finds your statements reflect a serious lack of information regarding the work load of the panel attorneys, a subject which you should have investigated before making such inflammatory, irresponsible, and false statements to the press.

The issue raised in Malinda S. is that a hearsay is not admissable as evidence. This concept is not new, nor is it created by the panel dependency attorneys. In fact, this concept is applied in every courtroom in which the government wishes to interefere with a fundamental right.

You have accused the dependency panel of engaging in unethical behavior. Thus, we demand an apology from you in writing for your remarks about the dependency panel.

Sincerely,

Jerry Leahy
President

Teresa Burrell
Treasurer

Monica Vogelmann
Vice-President

Joyce Sweet
Secretary

cc: Honorable Napoleon Jones
Board of Supervisors
Pamela Wilson

4490 FANUEL STREET, SUITE 222 • SAN DIEGO, CA 92109 • (619) 270-1448