PUBLIC HEARING ON THE NYS JUDICIAL AND ATTORNEY DISCIPLINARY BODIES

Albany, New York
June 8, 2009

Distinguished Chairman Sampson and Members of the Senate Judiciary Committee:

My name is Nora Renzulli. Thank you for allowing me to testify. I beg you to listen carefully so you will understand how invisible and unheard and frustrated I have felt for the last ten years being entangled against my will in the adversary system.

I am asking all of you to acknowledge our historically shared reality that the bedrock of our legal system for a respondent in a court action and at risk of serious loss in family law litigation is that we are supposed to have an opportunity to be heard before a decision is rendered.

I am here today because a Staten Island Family Court Judge did not operate under that premise and contrived to prevent me from being heard in my exhusband's disingenuous bid for a do-over of initial custody. The Judge, in fact, assisted a deadbeat dad in absconding with my children under color of law and turned years of prior Supreme Court determinations upside down. The false claim was that I had no entitlement to be heard before my children could be moved two states away was the Big Lie and became the lynchpin for an unscrupulous litigant's successful manipulation of the system. What is even more alarming is that after the children were taken in violation of my rights and treated to a milieu of disrespect and denigration toward me in the company of the beneficiary of the con game two states away, few in positions of authority acted as if there was any great need for intervention or human problem that needed to be solved. Those who did understand and tried to help included the late Supreme Court Judge Louis Sangiorgio, Supervising Justice of Richmond County, Vito Titone, the late Associate Judge on the Court of Appeals, then retired, two members of this Committee, Senators Savino and Lanza, one member of the Judiciary Committee of the Assembly, Matthew Titone, and City Councilman, Michael McMahon, now Congressman McMahon. Yet, even with this support, the court system drew a line in the sand and would not budge in its defense of a sitting judge who might as well have walked the children himself out the backdoor of the courthouse to a waiting getaway car, so little respect for the rule of law Judge Terrence J. McElrath show in this case.

I was forced to bring suit against the judge who booby trapped the custody court proceeding at issue that left my two 12 and 14 year old children out of state and virtually eliminated from my life overnight. The Attorney General's Office who represented Judge McElrath claimed no foul and that the Judge was acting within his jurisdiction, within the law, and within the Constitution. As the case went up on appeal, there was never any official acknowledgment of the harm done, nor was there any effort at remedy or restoration of the disruption and severe trauma caused to our mother-child relationships.

When the case against Judge McElrath was said to have mooted out at the Court of Appeals in 2007, as if the issue in contention concerned something static, simple and time limited, everyone who participated in the legalized absconding were off the hook. Since then, I have felt the need even

more for official recognition of a shared reality that there was a polluted legal process set in motion by Judge McElrath that contaminated everything it touched. The lasting damage to the rule of law and my life and the children's lives still needs to be remedied.

The core judicial wrongdoing I bring to this Committee's attention is Judge McElrath's contempt for legitimate orders of custody and child support to me issued by the Supreme Court of Richmond County and the Appellate Division 2nd Department. He treated them the same way he treated my relationship with my children as an expendable, throw away commodity. Once Judge McElrath had done away with the inconvenient but valid existing orders, he issued his own brand of duplicate initial court orders on the same matters adjudicated in Supreme Court years before. No tortured legal theory justified vesting the court with the power to do so.

Without judicial authority, Judge McElrath knowingly eliminated my custodial and child support receiving value as a parent and then again without judicial authority made me the new noncustodial parent and approved of me becoming the child support paying W2 parent whose funds the court could and did attach and funnel to my exhusband, the consummate innocent good guy, a man intent on covertly downgrading me and my extended family and whatever and whoever else was associated with me from any normal influence in my children's lives.

My exhusband reaped a huge profit from the con game of $114,000 in child support piped directly into his Pennsylvania account from my paycheck The State of New York made out as well. They took in sixty cents or more on the dollar for each of the $114,000 garnished under the Judge McElrath's fake child support order. That tainted subsidy that New York has received under Title IV-D from the federal government from 1999 until 2007 needs to be examined also.

Judge McElrath knowingly and without subject matter jurisdiction played along with this winner-take-all parody of justice concocted by the father's attorney, Norman Rosen, Esq., and with Richard Katz, Esq., the publicly paid Law Guardian coming right on board in the scam as you will see from the transcript I have provided for you. The charade explicitly presupposed that my existing and valid rights to custody and child support acquired in Richmond County Supreme Court in 1996 were meaningless.

How was this ploy so effective in producing the desired custody and child support flip? Had my rights as the custodial parent been honored, the court would have had to require the petitioner father to satisfy the modification burden of significant change of circumstances which is a steep burden to surmount and the court would have needed to give weight to my evidence before deciding whether to move the children, particularly in view of the fact that they would be moving to new schools and a new community after living with me in Staten Island all their lives. Given the court's fabrication of reality, the more onerous modification standard and move away standards were not applied and, therefore, the Court could elect to "place" the children using the more amorphous "best interests" standard with either parent regardless of whether I was heard or not. This calculated procedural slight of hand set the stage for erasing my opportunity to be heard when it would have counted before the move out of state took place.

The adage that possession in nine tenths of the law kicked in once they were gone and months passed

before Judge McElrath was ready to take testimony from me.

The flaws in Judge McElrath's preposterous theory should have been obvious to everyone. There was an existing order of custody from the bench on the record. Under the authority of Administrative Judge Michael Pesce, a determination on custody had been made in 1996 in Supreme Court in our case. A transcript with cover letter to opposing counsel and law guardian gave both lawyers notice that I had proof of my de jure custodial status. The transcript was shown to the Judge in their presence, yet all of the co-conspirators still chose to disregard the history of the case, and especially, the elephant in the middle of the courtroom --I had been the residential parent for all of the nine years since the father had left the marriage whether de facto or de jure.

My exhusband had been living in Pennsylvania since 1995 after moving out of the marital home in 1990. He had deliberately chosen not to contest custody in 1996 after dragging out the divorce process in Richmond County for six frustrating years. He then lost his child support appeal in 1998 enlisting the sympathies of the children, and often showing his open contempt for me in front of them. He sabotaged my parenting, cried poverty to the kids, and paid his child support erratically or not at all on retroactive arrears. I had resigned myself to never collecting because he worked free lance and I did not want to cause more angst for the children by going back to court. This is the parent that Judge McElrath saw fit to hand over custody to before hearing a word of my case and who fueled animosity and gratuitous further family upheaval for the rest of my children's adolescence.

Why would Judge McElrath not hear from me first before moving the children out of state if it was not indicative of an attitude of bad faith with a predetermined outcome? You Senators may be saying to yourselves by now that I must have been a very bad mother neglecting or endangering the children somehow to be considered worse than the father and so that would explain why such a drastic and preemptive out of state move was ordered. The answer is a resounding no. An ACS investigation had cleared me of absurdly trumped up charges of neglect that the father had instigated to bolster his custody bid. The ACS report in response was in Judge McElrath's possession before he handed over the children to the out of state, child support defaulting father. This can best be described as an attorney-judge contrived kidnapping and if it is not a crime, it should be. The term of art, fraud on the court, covers what happened in my case and means any decisions made as a result are void because the judge is not empowered to engage in a conspiracy to predetermine a case and if that is not criminal conduct, then it needs to be added to the penal code as well.

My pre-existing valid court ordered custodial status was arbitrarily deemed a nullity by judge McElrath and by implication, my existence and influence as a shunned devalued mother to and for my children.

That is my case against Judge McElrath in a nutshell.

This surreal turn of events was fully documented for the Commission on Judicial Conduct and I have supplied copies to the honorable members of this Committee.

I have endured years of avoidance from officials in the court system including a refusal to make

findings after review by the Corruption Hotline staff in 2003 after getting the rug pulled out from under me a second time by Judge Jeffrey Sunshine, Acting Supreme Court Judge in Richmond County. He had no compunction in dishing out more damage. When I asked him to distance himself from the fraud on the court with a declaratory judgment and create effective solutions, he turned the tables by publicly defaming and scapegoating me which caused havoc to my reputation for integrity as an attorney and state employee.

Judge Sunshine then farmed out the rest of his obligation to clean up the mess left by Judge McElrath to Judge Barbara Panepinto. She was named by him directly to take over and not by the neutral assignment system as his successor on the case. Judge Panepinto, not wanting to deal with this hot potato either, farmed out parts of the case to yet another finder of fact and law, Charmaine Henderson, over my objection. Judge Panepinto prevented "lost" documents central to the case in 2005 and 2006 from informing both of their decision-making. When challenged, Judge Panepinto refused to recuse despite her guilty silence about the whereabouts of court papers that had disappeared on her watch.

In 2006, I sought the aid of the Executive Branch's Chief Law Enforcement Officer, the Attorney General, to attempt to regain some ethical traction in the litigation. At the time Eliot Spitzer was considered to be highly ethical and I thought something could finally be salvaged in my case to at least let me be disentangled financially from my exhusband and get on with my life. I set forth the facts of what had happened in a memo to Attorney General Spitzer being careful to focus, not on his client Judge McElrath, but on the lowliest wrongdoers in the con game, publicly paid law guardian Richard Katz, Esq. and opposing counsel Norman Rosen, Esq.. The Public Integrity investigator, after reviewing my documentation, summed up his conclusion to me as "obvious misconduct and malfeasance in this case." Yet, despite my request to Inspector General Sherrill Spatz, no referral was made by the Judiciary fora formal investigation and intervention by the AG or by the naming of Special Counsel.

I am a mother first and I happen to be a lawyer in good standing and public servant second. These last two facts have not inhibited our virtually unaccountable New York State court system from kicking me to the curb as a parent and as a professional. My parental voice and public voice in this State has been repeatedly silenced and disabled. As an attorney and public employee, I have been blackballed and scapegoated for speaking out about the systemic subversion which I have witnessed in my case and others. I have nevertheless persevered.

I feel like I have been trapped in an echo chamber for the last ten years and I am hoping you will hear me and let the word out that the way the watchdogs for the courts are doing business is not working.

I am asking the New York State Senate Judiciary Committee to assist the courts in overcoming institutionalized blindness to human suffering in families of divorce. We need to end our pervasive hands off approach that looks away when wrongdoing is happening in the court system. We need to point out when the court supports the oxymoron of Good Parents/No Kids. The emotional harm and loss on both sides is incalculable. I can't stress that enough. We need to see the severity of the problem and the insidious damage it inflicts upon our society as a whole and upon children and the disrespected and discarded parent when judicial and attorney wrongdoing remains unheard and

unseen. Remedies are desperately needed to mitigate the damage. We need the courage and imagination of this Committee to think outside the box. I offer my experience and my support for novel solutions and innovations.

In conclusion, I served my complaint on the Commission on Judicial Conduct on December 22, 2008 with follow up in February and March of 2009. I spoke to an investigator and referred him to my court files and to my attorney.

I am here today because in the end, the Commission does not share my reality or what Eliot Spitzer's Public Integrity investigator deemed "obvious misconduct and malfeasnce." I learned on May 11, 2009 that the Commission had dismissed my complaint. No explanation. No findings. No remedy.

I am asking this Committee to recognize the immediate need for real and symbolic reparations for the Kafkaesque injuries inflicted on me, on my children, and on the rule of law by our institutional failure to identify the fraud on the court, a con game that ripped apart my family, my career and my faith in the system.

A judge who was meant to serve families and safeguard the rule of law, instead, created great misery and suffering without due process of law, and without subject matter jurisdiction, and he knew or should have known exactly what he was doing. That is the definition for the loss of judicial immunity. The product of his wrongdoing, the orders he signed, must be finally voided and long overdue remedies begun. The time lost with my children cannot be returned, but there is healing in truth telling. The system needs to finally assume its responsibility for having time and again, avoided correction, increased exponentially the damage, and wrongly projected enemy status onto me.

Thank you for your attention to this serious societal and individual and family tragedy.

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Attachments: letters to and from the State Commission on Judicial Conduct with supporting documentation; and correspondence on systemic proposals to OCA officials