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ALLEGATIONS

Ms. Small was appointed as Guardian for the Children by Judge Marion T McNulty Suffolk Supreme Court on May 24, 2012 (see exhibit A- Transcript from May 24, 2012). Almost immediately Ms. Small took on the role as advocate for the Plaintiff, my ex wife Terryn Leahy, rather than represent my children as she is required by law to do. Ms. Small also violated several rules of ethics, which I will outline below. It is my opinion that Ms. Small now realizes she conducted herself inappropriately and as such has never billed me for her services. Not billing me for her services, however doesn't change the fact that she acted unethically and has undermined my case and put me in a bad position with the courts.

- 1) It was obvious to me from discussions that I had with Ms. Small that she was having ex parte communications with the Judge regarding my case. I am unable to prove most of them but Judge McNulty did in fact state on the record that she had ex parte communications with Ms. Small regarding my case. She attempted to "recap" the conversation and then asked Ms. Small if her description of the conversation was an accurate one, which she agreed it was. The rules say that they should not have ex parte communications regarding my case, not that they can have them and then disclose it at a later date. In this case when a "court watcher" walked in on them. I even specifically asked Ms. Small on THREE occasions if she had any other ex parte communications regarding my case, and she refused to even reply. This leads me to believe she didn't want to disclose that there were in fact other ex parte communications.
- 2) The NY State Supreme Court "ethics for attorneys for children" August 2011 version states that the attorney for the children should "define your role and ensure that your role is understood by your client (s), THE PARTIES and their attorneys, as well as the Judge (emphasis added). In my case, this was NEVER done! Not even after I requested Ms. Small do so by voice message, e mail and fax (see exhibit B – Fax sent to Ms. Small dated August 6, 2012).

- 3) Conflicts of interest. I asked Ms. Small via e mail, voice mail and text message (see exhibit B – Fax sent to Ms. Small dated August 6, 2012) if there was any conflict of interest between her and Judge McNulty. Ms Small never replied. It is upon information and belief that Ms. Small has made donations to Judge McNultys election campaign AND her Woman’s organization in excess of \$250.00 (for which Judge McNulty was admonished for). This should have been disclosed from the beginning but certainly when she was specifically asked about it.
  
- 4) The NY State Supreme Court “ethics for attorneys for children” August 2011 version states that “the Attorney for the child should not be a witness at any time during the proceeding or action or in any subsequent proceeding by the same parties”. On July 17, 2012 Ms. Small did in fact “testify” in my case. I use quotes because she I was not given the opportunity to cross examine her (See exhibit C- Transcript from July 17, 2012 at page 9 line 7). Ms. Small is not a Psychologist or social worker and was testifying out of her role as “advocate for the children”. She was giving a “professional” “medical” opinion. Additionally, in Ms. Smalls “affirmation in partial opposition” dated July 31, 2012 (See exhibit D – Affirmation from Kathy Small). Under the code of ethics for attorneys for the children, this is clearly a violation. It is stated in the 212 Attorneys for Children Administrative Handbook for Attorneys for Children under “protocols”, “as an attorney for the children, however, you always should act in a manner consistent with proper legal practice and should not assume the role as social worker, psychologist or advocate for the parties”. Additionally, and just as important, by what standard of proof did Ms. Small make this determination? A “conversation” she had with my daughter? I provided all the information concerning Carlie’s school officials, teachers, councilors, forensic evaluators and therapist. I did not hear that Ms. Small spoke with any of them. As such, Ms. Smalls “observations” have no probative value and were outside of her authority to make based on her professional background. Ms. Small makes representation to what the Plaintiff Terryn Leahy told her as to why Carlie isn’t “visiting” me any longer. If Ms. Small is relying on the Plaintiffs comments in any fashion, this is against the New York State code of ethics because by using Ms. Leahys “arguments” that she presented against my application, Ms. Small is effectively “advocating” for one of the parties. Additionally, by stating “Terryn Leahy adamantly denies any alienation and alleges that Carlie has stopped visiting her father because she can no longer take being treated poorly by the defendant”, Ms. Small puts herself in a position where I have NO CHOICE but to call her as a witness so that I can cross examine her on her stated representation that Carlie is not in any “imminent danger”.

Based on all of the above, Ms. Small has clearly violated the courts published code of ethics and I ask that immediate action be taken.

Respectfully submitted,

Gary Jacobs