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State Of New York Grievance Committee for the Tenth Judicial District
150 Motor Parkway
Suite 102
Hauppauge, NY 11788

Send via USPS Priority Mail Tracking # 2305 0270 0001 5695 6018

Dear Ms. Gabriel,

I am resubmitting my complaint against Suffolk Attorney Kathy B. Small. I originally submitted the complaint on my behalf and received the enclosed rejection letter. I am now filing on behalf of my minor daughter, Carlie Amanda Jacobs age 16. I do realize that you do not want to look into this complaint but this is exactly what the grievance committee has an obligation to do. Ms. Small was representing my daughter.

In your "rejection" letter, you mischaracterize my complaint. I was not and am not asking for the committee to dismiss Ms. Small from the case (case is already closed), nor did I and am still not asking for any legal advice. I am simply filing a complaint that Ms. Small, representing my daughter Carlie did not follow the attorney rules of conduct, which as an attorney for the child she is directed to follow.

Thank you in advance for looking into this matter as you are directed to do by NY State statute. If there is a conflict of interest and that is why you didn't give my complaint a review, I would appreciate you informing me of that in writing.

Gary Jacobs, in behalf of Carlie Amanda Jacobs DOB 12/23/1995 minor child

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. Small's "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