

Gary Jacobs
14 Ray Lane • P. O. Box 984
Smithtown, NY 11787

Gary Jacobs
Proposed Testimony
before the
Commission on
Statewide Attorney
Discipline

***copies also sent to US attorney General &
Various news outlets**



August 5, 2015

Commission on Statewide Attorney Discipline

Attn: John Caher

25 Beaver Street

Eleventh Floor

New York, NY 10024-2310

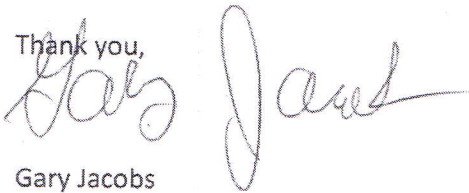
Dear Mr. Caher,

Per our conversation this morning, you advised me that I wouldn't be permitted to testify on August 11th at the hearing in NYC. I guess you didn't like what I had to say in my written testimony (following).

After being advised of this, I asked you if I would be permitted to bring in a film crew to do a story on the hearings. You first denied my request, but asked that I also submit my request in writing.

Please accept this as my formal request. Please reply in writing.

Thank you,



Gary Jacobs

CC. Jonathan Lippman

Long Island



Backstory

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Call: 516-455-6631 • Fax: 631-382-8159 • Email: GaryLJacobs@aol.com

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Smithtown, NY 11787

**Gary Jacobs testimony before commission on statewide attorney
discipline**

August 11, 2015

New York County Lawyers Association 14 Vesey Street New York, NY 10007

Dear Commission members,

First of all, I would like to thank you for agreeing to address the issue of attorney misconduct and the procedure to review attorney's misconduct.

My name is Gary Jacobs. I am an advocate for family law reform, current president of Americans For Legal Reform, local politician and the host of Long Island Backstory.

I will discuss my personal experience with the attorney review board in a moment, but first of all I would like to take a moment to speak in general about my feelings towards the review board and the general public's perception of the same.

It is well known in Suffolk County that the attorney review board is laughable. It is truly a joke. Even attorneys know that it is nearly impossible to get a ruling against you in Suffolk County. As long as you don't go against the system, the good Olé boys club in the wild east, as it is known, will protect you.

When I first had a problem with an attorney that was appointed to represent my children, I spoke to politicians and other attorneys that I had become friendly with. They ALL told me, without exception, that nothing will happen if I file a complaint. In fact, they all told me that the only change that may come of my filing a complaint was retaliation by the Suffolk Judges. This is exactly what happened in my case, and hundreds of others each year.

Now, on to specifics in my case.

Ms. Small, a Suffolk County Attorney whose office is now located at 1698 Roosevelt Avenue in Bohemia, was appointed as Attorney for the Children, formerly called Law Guardians, by Judge Marion T McNulty in Suffolk Supreme Court on 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. Once Ms. Small realized she

conducted herself inappropriately and was "caught", she refused to bill me for her services. Not billing me for her services however didn't change the fact that she acted unethically and had undermined my case and put me in a bad position with the courts. You can't get caught robbing a bank and just give the money back and be forgiven.

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, 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 reply. This leads me to believe she didn't want to disclose that there were in fact other ex parte communications.

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. In my case, this was NEVER done! Not even after I requested Ms. Small do so by voice message, e-mail and faxes.

I asked Ms. Small via e-mail, voice mail and text messages 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. The total amount of donations, I believe, is in excess of \$500.00.

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 I was not given the opportunity to cross examine her. Ms. Small is not a Psychologist or social worker and was testifying outside 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, Ms. Small made the same assertions and gave her opinion. As you will hear in my conclusion, she was very wrong, and this is why we don't let attorneys give testimony as it relates to medical and psychological issues. Under the code of Ethics for Attorneys for the Children, this is clearly a violation. It is stated in the 2012 Attorneys for Children Administrative Handbook 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

my daughter Carlie's school officials, teachers, counselors, forensic evaluators and therapist. I did not hear that Ms. Small spoke with any of them. As such, Ms. Small's "observations" had no probative value and were outside of her authority to make based on her professional background. Ms. Small made representation to what the Plaintiff Terryn Leahy told her as to why Carlie, my daughter, wasn't "visiting" me any longer. If Ms. Small was relying on the Plaintiff's comments in any fashion, this is against the New York State Code of Ethics because, by using Ms. Leahy's "arguments" that she presented against my application, Ms. Small was 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 would have NO CHOICE but to call her as a witness so that I could cross examine her on her stated representation that Carlie was not in any "imminent danger". Based on all of this, Ms. Small had clearly violated the court's published code of ethics.

All of the above was in my complaint filed against Ms. Small on October 8, 2012, along with proof of every allegation I made. All this is in the packets I handed out. One would think the review board would have no choice when faced with black and white proof but to at least investigate, and then admonish Ms. Small. But NO, what the board did was to add a paragraph after their usual canned denial letter stating, and I quote "after careful review, it has been determined that the issues you raise can only be determined by the court which appointed the attorney to represent you. The committee does not have the power to dismiss an attorney from a case, nor is permitted to render legal advice or act as your attorney".

WHAT THE HELL IS THIS? I wasn't asking for the attorney to be dismissed, the case was already over at the time I filed the complaint. Go to the Judge that appointed her? Didn't they even read my complaint and the transcripts provided? They were telling me to go to the Judge who I was claiming was being inappropriate with my attorney.

I then sent a follow up letter, which is also enclosed, explaining what I just told you. To this, I received no response.

In conclusion, and a few side notes.

The Judge I was referring to in my complaint, Marion McNulty was found to, in fact, be biased and unethical and secretly was asked to step down and her indiscretions covered up by Chief Judge Hinrichs (this is another issue). One of the main issues I had during the proceeding was I felt my daughter was using drugs and Ms. Small and my ex-wife were colluding together to cover this up so that I wouldn't get custody. This was in 2012. Within six months after the case closed, my daughter stopped talking to me and refuses to this day to even see me. If this isn't painful enough, last year my daughter was arrested in high school with over 20 bags of heroin! She is now a drug addict and has been in and out of rehab. The Judge and attorney Kathy Small have blood on their hands! The attorney review board had blood on their hands. They, by allowing attorneys to act unethically, carrying out the dirty work of corrupt, biased Judges, are co-conspirators to the destruction of so many children and parents' lives in Suffolk County.

Enough time has gone by with leaders putting their heads in the sand. The time to change the system is now.

Thank you for your time.