THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2022-0517

Dana Albrecht

v.

Katherine Albrecht

Rule 7(b) Appeal from 9th Circuit Court, Nashua, Family Division

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Brief of Petitioner-Appellant Dana Albrecht

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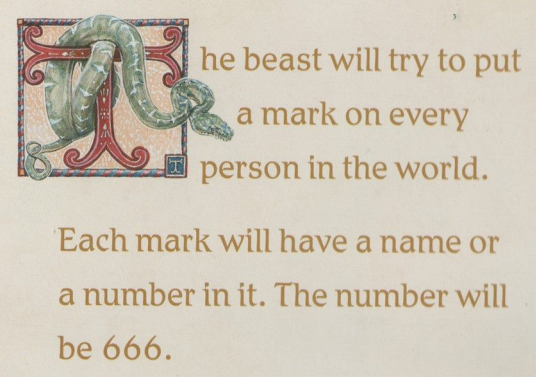
PREFACE

You may delay, but time will not.

– Benjamin Franklin[1]



– Katherine Albrecht[2]

You just can't beat the person who never gives up.[3]

– Babe Ruth, Baseball Pitcher, Boston Red Sox (1914-1919)[4]

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1 "Poor Richard Improved, 1758," *Founders Online, National Archives*, https://founders.archives.gov/documents/Franklin/01-07-02-0146. [Original source: *The Papers of Benjamin Franklin*, vol. 7, October 1, 1756 through March 31, 1758, ed. Leonard W. Labaree. New Haven: Yale University Press, 1963, pp. 326–355.]

2 Albrecht, Katherine. *I Won't Take the Mark: A Bible Book and Contract for Children*, page 16. Virtue Press, December 1, 2014. Available at: https://www.amazon.com/Wont-Take-Mark-Contract-Children/dp/0988280213/. The author further states (page 34) in her children's book (*Id.*) that, "Revelation was hard for people to understand. They did not know how a mark or a number could be used to buy and sell. Today people pay with numbers when they use a credit card, wave a payment wristband, or swipe their phone. Some people have even put computer chips in their hands with numbers inside." Unlike GAL Sternenberg, however, the author does *not* opine, with more specificity, on "Apple Pay."

3 George Herman 'Babe' Ruth. "Bat It Out!" *The Rotarian*, page 12. Published by Rotary International, July 1940. Available online at: https://books.google.com/books?id=IEEEAAAAMBAJ&lpg=PP1&pg=PA14

4 Cf. Transcript of November 6, 2020 hearing at 72-73.

QUESTIONS PRESENTED FOR REVIEW

1. Does N.H. Sup. Ct. R. 7(B) comport with RSA 458-A:35 and RSA 458-A:39?

2. Whether, or under what circumstances, is an appeal in New Hampshire from an order concerning enforcement of a court-approved parenting plan, a matter of right, or of discretion?

3. Did the trial court violate RSA 461-A:4-a?

4. Did the trial court violate N.H. Const. pt. 1, art. 14?

5. Did the trial court err in denying Petitioner's Motion for Reconsideration, in part, simply because it exceeded 10 pages?

6. Despite being asked, many times, and during multiple different hearings, to hold a hearing on Petitioner's November 1, 2019, *Ex Parte* Motion, the trial court did not do so, and waited 2 years, 8 months, and 21 days before finally denying Petitioner's request that it hold a hearing. By so doing, did the the trial court violate Petitioner's "due process" or "equal protection" rights under either the state or federal constitutions?

7. Parenting rights are protected under N.H. Const. pt. 1, art. 2. Did the trial court's order violate N.H. Const. pt. 1, art. 2?

8. Did the trial court violate the Fourteenth Amendment to the United States Constitution?

9. Did the actions of Circuit Court Administrative Judge David King cause any unconstitutional delay pursuant to N.H. Const. pt. 1, art. 14, or violate N.H. Const. pt. 1, art. 35?

STATEMENT OF THE CASE AND FACTS

Background.

This family law matter is one of at least nine cases from the 9th Circuit Family Division, wherein former judge Julie Introcaso[5] appointed her close friend, Kathleen Sternenberg, as *Guardian Ad Litem* (GAL).

Prior to the onset of this case, on May 1, 2014, Ms. Introcaso and Ms. Sternenberg both acknowledged their close friendship, on the record in open court, in a different case, wherein the following exchange occurred:

> **Ms. Introcaso:** *And I recognize Attorney Sternenberg's writing, I believe – maybe, maybe not – but her name. Counsel should know that Attorney Sternenberg and I are very good friends. Very good friends. I don't know if she shared that with you, or she did not. And I'm going to look at K. – who I refer to as K. I don't call her Kathleen or – K., are we very good friends?*
>
> **Ms. Sternenberg:** *Yeah, I think so.*
>
> **Ms. Introcaso:** *Yeah, we are very good friends. Very good friends like godparent of my child. We are very close.*[6]

See May 1, 2014 hearing transcript in Sobell v. Sobell, No. 659-2013-DM-00348, at 2-3.

Marital Master Bruce F. DalPra was also fully aware since 2014, of this conflict of interest between Ms. Introcaso and Ms. Sternenberg. As Ms. Introcaso testified in her February 8, 2021 sworn deposition (at 61:21), "Bruce [DalPra] has known that for seven years," i.e. since 2014.[7]

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5 See *State v. Introcaso*, No. 226-2021-CR-0126, available online at https://www.courts.nh.gov/media/requested-cases/criminal/state-new-hampshire-v-julie-introcaso

6 Ms. Sternenberg and Ms. Introcaso had even vacationed together, at least twice, in 2004 and 2005, to "see some plays at Niagra by the Lake," in New York. Cf. *Lawrence v. Texas*, 539 U.S. 558 (2003) ("protecting liberty interests of persons from unwarranted government intrusions into a dwelling or other private place")

7 ApxII. 18.

Nine Cases of Judicial Misconduct

The following table provides a list of nine family law cases wherein Ms. Introcaso ordered that her close friend Ms. Sternenberg be appointed as GAL.

Date of Appointment	GAL Order of Appointment	Case Name(s)	Docket Number(s)
September 5, 2013	Depo. Ex. 13[8]	*Merrifield v. Cox*	657-2011-DM-00565
January 30, 2014	Depo. Ex. 14	*Sobell v. Sobell*	659-2013-DM-00348 Appeal: 2015-0199 Appeal: 2015-0724
May 12, 2015 June 22, 2015	(whited out)[9] Depo. Ex. 15	*Crawford v. Crawford*	226-2008-DM-00525
August 20, 2015	Depo. Ex. 16	*Covart v. Covart*	659-2015-DM-00463
October 13, 2016	Depo. Ex. 17[10]	*Albrecht v. Albrecht*	659-2016-DM-00288 Appeal: 2018-0379 Appeal: 2019-0436 Appeal: 2020-0118 Appeal: 2021-0192 Appeal: 2022-0284 Appeal: 2022-0517
February 22, 2017	Depo. Ex. 18	*Yiatras v. Yiatras*	659-2016-DM-00322
October 24, 2018	Depo. Ex. 2[11]	*Campbell v. Partello*	659-2018-DM-00702
November 29, 2018	Depo. Ex. 3	*Loudermilk v. Montgomery* *Morell v. Montgomery*	659-2015-DM-00185 659-2019-DM-00383
December 12, 2018	Depo. Ex. 4[12]	*Ausiaikova v. Meckel*	659-2018-DM-00414 Appeal: 2020-0160[13]

8 Recommended by Marital Master Bruce F. DalPra. However, "under the marital master system, it is a judge, not a master, which determines the case." *Witte v. Justices of New Hampshire Superior Court*, 831 F.2d 362 (1st Cir 1987).

9 The initial order of appointment was for GAL Kysa Crusco. The NHJB no longer possesses a copy of this order. Ms. Introcaso likely applied whiteout, on the court's original file copy of the May 12, 2015 order in *Crawford*, covering up Ms. Crusco's name, and writing in Ms. Sternenberg's name over the whiteout. Petitioner further alleges that Ms. Introcaso's actions in allegedly whiting out this order, in 2015, was a criminal violation of RSA 641:7.

10 *Supra* note 7. At this time, Master DalPra had been aware of the conflict of interest since 2014.

11 *Id.* See also JCC Complaints JC-19-050-C and JC-20-010-C.

12 *Supra* note 7.

Background of the present action

The parties were married in California on November 4, 1996, and are the parents of four children, P.A. (now age 25),[14] C.A. (now age 21),[15] S.A. (now age 18),[16] and G.A. (now age 16).[17]

In 2001, the parties relocated from California to Hollis, New Hampshire, where both of their daughters were born.

Central to this case, is the parties' ongoing dispute over their children's religious upbringing, and their severe disagreements about Collinsville Bible Church,[18] located in Dracut, Massachusetts. Collinsville Bible Church ("CBC") is part of the "Independent Fundamentalist Baptist" (IFB) religious denomination, led by Bob Jones University. Cf. *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983). ("denying tax-exempt status, due to racial discriminatory policies").[19] See also *Kurowski & Kurowski*, 161 N.H. 578 (2011).[20]

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13 Judge Rauseo, while still Attorney Rauseo, served as appellate counsel in *Ausiaikova v. Meckel*. Petitioner opines: Зако́н что ды́шло, куда́ повернёшь - туда́ и вы́шло.

14 The parties' oldest son, P.A., was 18 at the commencement of this action. He has resided with Mr. Albrecht in Nashua, New Hampshire, since 2019.

15 The parties' younger son, C.A., was a minor at the commencement of this action, and six months old when the parties moved to New Hampshire. He presently resides in Grand Rapids, Michigan.

16 The parties' older daughter, S.A., was a minor at the commencement of this action, and was born in Hollis, New Hampshire. She presently resides with Ms. Albrecht in East China, Michigan.

17 The parties' younger daughter, G.A., was a minor at the commencement of this action, and was born in Hollis, New Hampshire. She presently resides with Ms. Albrecht in East China, Michigan.

18 See, e.g. Mr. Albrecht's testimony that he "wasn't able to follow [CBC's] belief that the earth is 6,000 years old" (Transcript of 10/6/2017 hearing at 238) and Ms. Albrecht's testimony that "Dana said in the police station at that time was, we will follow Dr. Oteri's [i.e. the childrens' pediatrician] recommendation that, when there is a conflict over church, the children will simply not be allowed to go to any church. And I remember telling him, 'That is incredibly mean. This means so much to the children.'" (Transcript of 8/7/2017 hearing at 332).

19 Cf. *Dred Scott v. Sandford*, 60 U.S. 393 (1857) and *Plessy v. Ferguson*, 163 U.S. 537 (1896).

20 Indeed, many of the underlying facts of this case even closely mimic many of the underlying facts of *Kurowski*, insofar as the underlying trial court dispute in *Kurowski* also concerned whether the Kurowskis' daughter should be taught at home using Bob Jones University curriculum, or enrolled in public school. Mr. Kurowksi also further alleged that their daughter's involvement in the "IFB" religion had a negative effect on their parent-child relationship, as does Mr. Albrecht in this instant case.

Commencement of the present action

The parties ongoing 6 ½ year divorce case and parenting dispute was initiated by Respondent Katherine Albrecht on April 8, 2016, when she obtained her first "domestic violence" temporary order of protection from former judge Paul S. Moore,[21] prior to any filing by Plaintiff Dana Albrecht. Respondent's very first DV, Docket No. 659-2016-DV-00120, was dismissed six months later, on October 4, 2016.

As a consequence of Respondent's first DV, Respondent required Plaintiff to visit Collinsville Bible Church ("CBC") three times a week, if Plaintiff wished to have any contact with their minor children. *ApxI. 11*.

Indeed, for the first six months of this case, all parenting time between Plaintiff and their three minor children was required to be supervised by CBC church leadership, until Respondent's first DV was dismissed.

Appointment of Kathleen Sternenberg as *Guardian ad Litem* (GAL).

On October 13, 2016, Ms. Introcaso appointed Ms. Sternenberg as GAL.[22] While at that time, both Master DalPra and Ms. Introcaso were aware of the relevant conflict of interest, neither judicial officer informed the parties, nor did GAL Sternenberg.

When Ms. Introcaso was later questioned in her February 8, 2021 sworn deposition about the parties' divorce case, the following exchange occurred (at 164-166) :

> **Mr. Waystack:** *Okay. Let's go to Exhibit 17. This is a shorter exhibit again. This is an order on appointment of GAL. And the name of the case is Albrecht. Do you see that?*
>
> **Ms. Introcaso:** *Yes.*

21 ApxI. 4. Former judge Moore was disbarred on July 5, 2018. See LD-2018-0005, *In the Matter of Paul S. Moore, Esquire*.

22 ApxI. 15. Exhibit 17, February 8, 2021 deposition of Julie Introcaso.

Mr. Waystack: *Now, this one -- if you look at the third page, Judge, third page, Exhibit 17, this one was recommended by Master Bruce DalPra, wasn't it?*

Ms. Introcaso: *Yes.*

Mr. Waystack: *Okay. And if you go back to page 1 of Exhibit 17, on paragraph 2, can you tell whose handwriting that is for Kathleen Sternenberg?*

Ms. Introcaso: *This is a combination. Again, I am almost certain. This is a combination between Master DalPra's writing and -- for example, you will see "Dana Albrecht." That to me looks like Master DalPra's handwriting of that name. Below it appears to be the handwriting of Aline Chasseur, who is his courtroom clerk.*

Mr. Waystack: *Paragraph 2 of the appointment, it looks like there's a name initially put in there and then it's crossed out. Do you see that?*

Ms. Introcaso: *Yeah.*

Ms. Introcaso: *I have no idea. I never conducted a hearing or prepared any forms in this case.*

Mr. Waystack: *Okay.*

Ms. Introcaso: *Oddly, I am familiar with it. This is something of a notorious case. But all I know is the name Albrecht and Albrecht.*

Mr. Waystack: *Is this a case where, because you respected Master DalPra and he usually made good judgments, you just looked at it quick and signed it?*

Ms. Introcaso: *Absolutely. Again, I – yes.*

Mr. Waystack: *Okay.*

Ms. Introcaso: *Appointment of a GAL form, I cosigned it.*

Relocation of Respondent and minor children to California

On February 2, 2017, Respondent filed her *Verified Motion* to relocate the parties' minor children from New Hampshire to California (Index #84). Petitioner objected. *ApxI. 19*.

At the August 9, 2017 hearing, GAL Sternenberg testified (*Tr. 352*) that:

> *I believe, for the reasons that I have in my report and I think I've done a pretty good job of explaining, that Katherine Albrecht is in need of relocating to southern California, where she has the support of her family, she's closer to the facility where she would get treatment for her cancer, and she has financial stability where she doesn't have it now.*

On or about September 1, 2017, upon Master DalPra's recommendation, Respondent then relocated with the parties' three minor children, from Hollis, New Hampshire to Pasadena, California. *ApxI. 26*.

In March 2018, Respondent relocated a second time with the parties' minor children, to Sierra Madre, California,[23] but did not inform Petitioner of this move until January 2, 2019.

The May 9, 2019 hearing

On May 9, 2019, there was a hearing before Master DalPra. Prior to that hearing, or during that hearing, Master DalPra was required to disclose, *sua sponte*, the conflict of interest between Ms. Introcaso and GAL Sternenberg, but failed to do so.

However, "failure to disclose to the parties the basis for … disqualification under [the Code of Judicial Conduct] will result in a disqualification of the judge." *Blaisdell v. City of Rochester*, 135 N.H. 589, 593-94 (1992)., and Master DalPra should have been disqualified from presiding over this hearing.

23 See April 5, 2018 Sierra Madre Police Report, introduced as "Defendant's C" in the related DV matter, Nos. 2020-0118, 2021-0192, 2022-0284.

At issue before the trial court at the May 9, 2019 hearing were Petitioner's allegations that Respondent was in contempt of the trial court's *Parenting Plan*, wherein Petitioner alleged that Respondent had refused to allow Petitioner any contact, including by telephone, with their minor children, since Christmas 2018, despite Petitioner's repeated requests for parenting time pursuant to the trial court's *Parenting Plan*.

On June 30, 2019, Judge Mark S. Derby then denied Mr. Albrecht's *Motion to Reconsider* (#345) of Ms. Introcaso's May 30, 2019 order (#344) from the May 9, 2019 parenting hearing. At that time, Master Dalpra, Ms. Introcaso, and Judge Derby[24] were all aware of the conflict with GAL Sternenberg, but all failed to disclose it.

Further, concerning Judge Derby's credibility, when queried by Attorney Michael Delaney, about whether *Campbell v. Partello* "was ... a large case compared to other parenting cases," Judge Derby responded under oath that "in 2019 I didn't have much to compare it to, so if you define large, I can try to answer it better,"[25] but failed altogether even to mention the *Albrecht* matter in his deposition.

Petitioner subsequently requested appellate review (No. 2019-0436) of Ms. Introcaso's May 9, 2019 order (#344) and Judge Derby's order on reconsideration (#345). At that time, Petitioner was unaware of the relevant conflicts of interest, and so was unable to raise that issue. Further, at that time this Honorable Court also declined to review the case.

"A declination of acceptance order expresses no opinion on the quality or correctness of either the decision below or the arguments to be advanced by counsel on appeal. The declination is not a precedent for future declinations, nor does the opinion below assume any greater or lesser precedential value after the declination than it had before." *State v. Cooper*, 127 N.H. 119, 125 (1985).

24 On April 18, 2019, Judge Derby issued his first order (#39) in *Campbell v. Partello* concerning GAL Sternenberg, after reviewing Ms. Introcaso's recusal order. See also *ApxI. 39*.

25 *ApxIII. 18*. January 18, 2022 deposition of Judge Mark S. Derby, at 63-64.

October 2019 Halloween Vacation and related "Domestic Violence" Petition.

On October 29, 2019, Respondent removed their minor children from school in California, for a week-long vacation in New England.

On October 31, 2019, Respondent reported to the Sierra Madre, California Police that "she is on vacation with her children and is not home. She also advised [that] her attorneys advise[d] her ex husband that they are on vacation and he is only calling to disturb them. She advised she has full custody of the children." *ApxI. 63*.


[CAD1/10920 10/31/19 10:55:35]
THE MOTHER OF THE CHILDREN CALLED AND ADVISED SHE IS ON VACATION WITH HER CHILDREN AND IS NOT HOME. SHE ALSO ADVISED HER ATTORNEYS ADVISED HER EX HUSBAND THAT THEY ARE ON VACATION AND HE IS ONLY CALLING TO DISTURB THEM.
SHE ADVISED SHE HAS FULL CUSTODY OF THE CHILDREN.
REPORTING PARTY
AREA CODE
PHONE NUMBER

On November 1, 2019, Petitioner filed an *ex parte* motion (#364) requesting, *inter alia,*parenting time and counseling for the parties' minor children. *ApxI. 65*. On July 22, 2022 the trial court finally denied this motion, 2 years, 8 months, and 21 days, after it was ordered to "be scheduled in the ordinary course" by Judge Leary, which is the subject of the present appeal. *ApxI. 190*.

On Sunday, November 3, 2019, Mr. Albrecht attempted to attend services at Collinsville Bible Church,[26] located in Dracut, Massachusetts, hoping to see his three younger children.[27] The events of this day have subsequently become the matter of much controversy, and this Honorable Court may refer to the related[28] DV matter, presently pending appeal, No. 2022-0284.

On November 12, 2019, Respondent then filed her typed DV Petition alleging, *inter alia*, that Petitioner had committed Domestic Violence by:

26 Petitioner had most recently attended CBC, without incident, on August 4, 2019.

27 The parties' oldest adult son, P.A., has resided together with Petitioner, in Nashua, New Hampshire, for the majority of the time since January 2019 through the present.

28 Petitioner alleges that the information on the form Respondent used for her DV Petition was handwritten by Ms. Wendy Borrun, a paralegal at Welts, White, & Fontaine, whereas the "domestic violence" allegations against Petitioner were attached as a five-page single-spaced typed document.

Additionally, November 1, 2019, Mr. Albrecht filed an Ex Parte Motion for Contempt and to Compel with the 9th Circuit – Family Division – Nashua, Docket No.: 659-2016-DM-00288, asking, in part, that I be compelled to disclose our precise location, and that I be compelled to provide him with parenting time before I returned to California. There is no requirement in the Court-ordered Parenting Plan that I have to notify Mr. Albrecht if I pull the girls out of school for a few days; there is no requirement in the Parenting Plan that I have to notify Mr. Albrecht if I travel in or outside the State of California; and there is no requirement in the Parenting Plan that I have to provide Mr. Albrecht with an itinerary of my travel plans.

The Court issued an Order dated November 1, 2019, denying Mr. Albrecht's Motion for Ex Parte Relief finding that "No ex parte or emergency orders are issued no showing of imminent danger of irreparable harm. The case shall be scheduled in the ordinary course."

On November 12, 2019, Judge Erin McIntryre issued a "no temp order," in the related DV case, and scheduled a hearing, in the DV case, for December 9, 2019. *ApxI. 77*.

Petitioner's 2019 request to consolidate for hearing

On November 19, 2019, Petitioner requested that his *Ex Parte* Motion for Contempt and to Compel (#364) be heard concurrently with the DV matter. As the trial court case summary sheet in the related DV matter, No. 659-2019-DV-00341, indicates:

11/19/2019	Motion to Consolidate Party: Attorney Caulfield, Joseph, ESQ *Defendant's Motion to Consolidate for Hearing*	*Index #10*
12/02/2019	Objection Party: Attorney Fontaine, Michael J., ESQ *Plaintiff's Objection to Defendant's Motion to Consolidate for Hearing*	*Index #15*
12/04/2019	Denied (Judicial Officer: Derby, Mark S) *Parties cautioned that 12-9-19 hearing is scheduled for 30 min & double-booked with another DV case, and should plan accordingly.*	
12/04/2019	Notice of Decision *mailed to parties*	*Index #16*

Judge Derby, however, denied Petitioner's request, ordering that "Parties cautioned that 12-9-19 hearing is scheduled for 30 min & double-booked with another DV case, and should plan accordingly," after which Judge Derby then proceeded to hold a three-day trial in the DV matter. *ApxI. 100-110*.

Judge Derby then found against Petitioner, in the related DV matter, "because he did not have scheduled parenting time."

With regard to this related DV, all arguments set forth in Petitioner's brief in the related appeal, No. 2022-0284, filed February 13, 2023, are incorporated by reference herein, the same as if plead in full.

Respondent's subsequent relocation from California to Michigan

On October 15, 2020, Respondent purchased her present home, located in East China, Michigan. *ApxI. 119*.

Further, at the October 13, 2022 trial court hearing in this parenting matter, Respondent testified that she drove from California to Michigan "sometime in October 2020" and then "didn't return to California." *Tr. 51-52*.

October 23, 2020 public disclosure of the investigation of Ms. Introcaso.

On October 23, 2020, the New Hampshire Union Leader published an article about Ms. Introcaso's criminal investigation. After reading this article, Petitioner learned about the *Partello* matter and the conflict of interest between Ms. Introcaso and Ms. Sternenberg, for the very first time. *ApxI. 121*.

October 27, 2020 Motion to Take Judicial Notice.

On October 27, 2020, Petitioner filed a *Motion to Take Judicial Notice* (#417) of these recently disclosed events, *supra*, that has never been ruled on by the trial court.

November 6, 2020 Hearing

The trial court held a telephonic hearing on November 6, 2020[29] in this parenting matter, that has been the subject of much controversy. Three different versions of the transcript from this hearing have been produced by

29 This hearing was originally scheduled for October 29, 2020 but was rescheduled for November 6, 2020.

eScribers. The third, most recent version of this transcript, is 144 pages in length, and was docketed in this appeal, on December 20, 2022.

Pursuant to the hearing notice for the "Sixth of November" hearing:

Case Name: **In the Matter of Dana Albrecht and Katherine Albrecht**
Case Number: **659-2016-DM-00288**

The above referenced case(s) has/have been scheduled for:

Hearing on Motion(s) #362, #368, #372 and #374

INSTRUCTIONS ON WEBEX TO BE MAILED UNDER SEPARATE COVER.

Date: October 29, 2020
Time: 1:00 PM
Time Allotted: 2 Hours

30 Spring Street
Nashua, NH 03060
Courtroom 5 - 9th Circuit Court - Nashua

Pursuant to the case summary sheet:

10/29/2020	**Hearing on Motion(s)** (Judicial Officer: DalPra, Bruce F) *HEARING 3 HOURS NOT 2 HEARING ON MOTIONS #362, 368, 372 AND 374 WEBEX*	
11/06/2020	**Hearing on Motion(s)** (Judicial Officer: DalPra, Bruce F) *HEARING SCHEDULED FOR 4 HOURS NOT 3 1/2 HEARING ON MOTIONS 362, 368, 372 AND 374 CONFERENCE ROOM 3907180*	

The case summary sheet further describes Motion(s) #362, #368, #372, and #374 as:

11/01/2019	Petition to Bring Forward Party: Petitioner Albrecht, Dana	*Index #362*
01/20/2021	Order Issued *(DalPra, MM/Curran, J) see order #425*	

...

11/12/2019	Motion to Amend Party: Petitioner Albrecht, Dana	*Index #368*
06/08/2020	Granted (Judicial Officer: DalPra, Bruce F) *See Order #406*	
06/08/2020	Order Issued (Judicial Officer: Chabot, Kimberly A)	

...

11/22/2019	Motion for Modification Party: Respondent Albrecht, Katherine *(rsp) parenting plan*	*Index #372*
01/20/2021	Order Issued *(DalPra, MM/Curran, J) See #425*	

...

11/22/2019	Motion for Ex Parte Relief Party: Respondent Albrecht, Katherine	*Index #374*

...

At the onset of the "Sixth of November" hearing, the following exchange (T*r. 3-4*) occurred:

> **Master DalPra:** *My name is DalPra. You folks are connected to the courtroom, and we're here on four pleadings. And they both are pretty much – the first two pleadings* (#362, #368) *filed by Mr. Albrecht regarding a modification of the parenting plan, and the second two pleadings* (#372, #374) *filed by Mrs. Albrecht with pretty much the same requests, modification of the parenting plan.*
>
> ...
>
> **Mr. Caulfield:** *Yes, Your Honor. I – I just want to point out that that doesn't clear up the docket as they set forth in Petitioner's –*
>
> **Master DalPra:** *I don't care whether it clears the docket up or not, counsel. The order that went out said that these four motions are what we're hearing today, and that's what I'm hearing today.*

Master DalPra simply refused to hear *Petitioner's Ex Parte Motion for Contempt and to Compel (#364)* that was ordered (on November 1, 2019) by Judge Leary "to be scheduled in the ordinary course." *ApxI. 64-76*.

11/01/2019	Motion for Ex Parte Relief Party: Petitioner Albrecht, Dana	*Index #364*
11/01/2019	Obj - Motion for Ex Parte Relief Party: Respondent Albrecht, Katherine	*Index #365*
11/01/2019	Ex Parte Order	*Index #366*
11/01/2019	Denied (Judicial Officer: DalPra, Bruce F) *No ex parte or emergency orders are issued no showing of imminent danger of irreparable harm.The case shall be scheduled in the ordinary course.*	
11/01/2019	Notice of Decision	*Index #367*

Instead, Master DalPra demanded to **re-hear** *Respondent's Ex Parte Motion to Temporarily Suspend Petitioner's Parenting Time (#374)* that was already denied by Judge Patricia Quigley (#376), who had further already ordered (on November 22, 2019) that "Request for *ex parte* orders is denied. No hearing is required." *ApxI. 93-99*.

11/22/2019	Order (Judicial Officer: DalPra, Bruce F) *on ex parte motion "No ex parte orders are issued."*	*Index #376*
11/26/2019	Motion to Reconsider Party: Respondent Albrecht, Katherine *(rsp) of November 22, 2019 order*	*Index #377*
01/15/2020	Denied (Judicial Officer: DalPra, Bruce F)	
01/15/2020	Order Issued (Judicial Officer: Introcaso, Julie A)	

During the "Sixth of November" hearing, Master DalPra then went on to state "who gives a fuck?" concerning Petitioner's testimony (*Tr. 33:23*), laughed at Petitioner's concerns their son C.A. was mentally ill (*Tr. 67:5*), and called the parties daughters S.A. and G.A. "a bunch of morons." (*Tr. 80:19-20*).

Finally, despite having already purchased her Michigan residence on October 15, 2020, Respondent also testified under oath at the "Sixth of November" telephonic hearing that "I reside at 730 West Alegria Avenue in Sierra Madre, California." (*Tr. 79*).

November 13, 2020 email written by Judge David King.

On November 13, 2020, Judge David King then wrote the following email:

> **From:** Hon. David D. King
> **Sent:** Friday, November 13, 2020 4:22 PM
> **To:** Master Bruce F. Dalpra <BDalPra@courts.state.nh.us>
> **Subject**: Albrecht hearing November 6, 2020
>
> Bruce:
> I am sorry to have to be writing this email but I'm sure you will understand that I have an obligation under the Code to deal with these situations. On November 6, 2020 you had what I believe was a telephonic hearing in

what is obviously a very difficult matter, Albrecht and Albrecht. One of the parties requested a copy of the audio recordings from the hearing, which was provided, and subsequently ordered a transcript.

When the transcriptionist from escribers was preparing the transcript, she brought to her supervisor's attention comments that "the judge" made during the proceedings. The supervisor in turn reached out to court administration. I am attaching two examples that were sent to my attention, both email excerpts from escribers staff as well as snippets of the actual audio. The audio is difficult, but not impossible, to hear on our equipment but apparently very clear on the more sophisticated equipment used by escribers. Obviously I do not know anything about this case, other than the fact that it has a very large number of docket entries, which in and of itself is an indication that it involves difficult issues, and probably difficult parties. For that reason it isn't clear whether your comments indicate a bias against one of the parties or are just comments made in frustration. I think we can both agree that they do not demonstrate the patience or dignity expected of judicial officers under Rule 2.8.

I am hoping that we can speak about this next week after you have a chance to review what I have attached. (The 2 notes pasted below are from the emails received from escribers.)

David

David D. King
Administrative Judge
New Hampshire Circuit Court
1 Granite Place, Suite N400
Concord, N.H. 03301
Telephone (603) 271-6418

I thought you should be aware, per our transcriber regarding the above order:

So everyone is on Zoom/telephonic for this hearing, other than the judge. The mic is right next to the judge and I can hear everything. He talks to his clerk and himself a lot and makes some pretty bad remarks about the parties and the commentary the parties make.

For instance, he whispers to himself, right in the mic, "who gives a fuck" when the witness is answering a question, or calls them all a bunch or

> morons, and so much. It actually creates it to where I can't hear what the witness is saying because he's talking into the mic, I think, completely unaware of what he's doing.
>
> Here are a few examples of time stamps where you can clearly hear the Court:
>
> "Who gives a fuck?" - **12:28:16
>
> "Of course not, they're a bunch of morons." - **1:45:59

However, Judge King did not notify either of the parties, nor (apparently) this Honorable Court, nor (apparently) even the Judicial Conduct Committee, of the precise nature of both of these two comments made by Master DalPra. *ApxI. 126-192*.

January 13, 2021 Michigan Emergency Room Admission

On January 13, 2021, the parties' minor daughter G.A. was admitted to the emergency room at Ascension River District Hospital, in East China, Michigan, for a close head injury. Respondent waited a week to inform Petitioner.

January 20, 2021 Parenting Order

On January 20, 2021, the trial court, still unaware that Respondent and the minor children were in Michigan, rather than California, issued a parenting order (DalPra/Curran) from the "Sixth of November" hearing, stripping Petitioner of most of his remaining parenting rights, and granting Respondent sole decision making authority. This order was later vacated.

January 21, 2021 Notice of Relocation

On January 21, 2021, and for the very first time, Petitioner learned, via Respondent's counsel, that Respondent had relocated with their minor children, from California to Michigan. *ApxI. 164-65*.

February 16, 2021 Judicial Conduct Committee Correspondence

On February 16, 2021, Mr. Robert Mittelholzer, Executive Secretary of the Judidical Conduct Committee (JCC) wrote to Master DalPra (*ApxI. 167*), copying Judge King, stating:

> *Following discussion, the Judicial Conduct Committee voted to dismiss* [Master DalPra's] *report*[30] *for the lack of any showing of judicial misconduct with no reasonable likelihood of a finding of judicial misconduct.*

July 15, 2021 UCCJEA Hearing in Michigan

On July 15, 2021, both parties were ordered to appear for a UCCJEA hearing on jurisdiction in the 31st Circuit Court, St. Clair County, Michigan, Docket No. 21-000769-UN, before the Honorable Elwood Brown.

Mr. Albrecht appeared *pro se*, and Ms. Albrecht was represented by Michigan Attorney Timothy Wegmeyer, another member of Ms. Albrecht's church, who testified at the Michigan hearing that "they [the parties' daughters] are fourteen and seventeen. I know them very casually and I've never actually spoke to them about this file, but Dr. Albrecht recently started, when she moved to Michigan, started attending the Church that I belong to and I'm one of the Church Council members et cetera." *Tr. 238-242*.

February 18, 2022 Hearing(s).

The Nashua Family Division trial court held two hearings on February 18, 2022 before Judge Rauseo. The morning hearing was held in this, the parenting matter, and the afternoon hearing was held in the related DV matter.

At the morning hearing, Petitioner raised the issue of the accuracy of court records and transcripts, primarily in the parties' own case, but also (incidentally) concerning allegations that other court records, such as the

30 JCC report JC-20-062-G, that was a consequence of Judge David King's November 13, 2020 email to Master DalPra.

original GAL *Order of Appointment* in the *Crawford* matter, had also been falsified by former judge Introcaso.

Ms. Kysa Crusco[31] appeared at the hearing with a copy of her original May 12, 2015 *Order of Appointment* as GAL in *Crawford*, from before the court's original file copy of this order was covered up with white-out, and before Ms. Kathleen Sternenberg's name was written on top of the white-out, on the court's original file copy. *ApxI. 169, 171*.

Plaintiff wished to introduce a copy of the unaltered court record from *Crawford* into evidence, for comparison with the altered record in the court's official *Crawford* file, but was denied the opportunity to do so. *Tr. 7-10*.

Plaintiff also introduced into evidence, a Nashua Police report (21-78476-OF) wherein Nashua Police Officer Robert Dunn attempted to investigate discrepancies in the "Sixth of November" transcript. Officer Dunn reported that he "also spoke with Michele Lilley at eScribers. She informed me that the original transcribers did not hear the offending lines as they were whispered. She also explained that the missing lines were not put into the body of the text as this is a New Hampshire policy that they only go on the Errata page." *ApxI. 173*.

In any event, the primary issues before the trial court were Petitioner's motions to vacate prior orders of Master DalPra in the parenting case, beginning with the "Sixth of November" hearing, on the grounds that Master DalPra was disqualified pursuant to this Honorable Court's December 16, 2021 order in the related DV matter, No. 2021-0192.

Respondent's counsel stated to Judge Rauseo (*Tr. 15*), "My client is running out of money fighting all of these motions. You have the ability to review that record and make a decision as to whether you think the weight of the evidence and testimony supports the order that was entered. And you can do it in a way that's independent of the issue of whether you should vacate that decision because of a potential conflict issue. You can say you looked at

31 The transcript incorrectly identifies Ms. Kysa Crusco as "Ms. Fusco" [sic].

it, you reviewed it, and you made a decision that's either the same, or that's different," suggesting, in effect, that Judge Rauseo perform a *de novo* review of the existing evidence and testimony from the "Sixth of November" hearing.

Plaintiff was not opposed, in principle, to such a *de novo* review, but stated "my first concern with that is when the police officer in the courtroom had audio CDs from the court. He wasn't able to listen to those. So right there, we've got something odd going on. They were provided by the clerk, and he was simply unable to listen to them." (*Tr. 19*)

Concerning audio recordings of the "Sixth of November" hearing, Judge Rauseo opined that "we know they're audible because transcripts were created," to which Petitioner responded, "Presumably, yes. But I think there's some question on the accuracy of those transcripts." (*Tr. 19*)

Judge Rauseo then stated, "It's hard for a transcriptionist to sometimes report everything that happens in the courtroom. But if I listen to the audio, then I'm forming my own opinion based on what I'm hearing, not what some third party is hearing and transcribing." (*Tr. 20*)

Petitioner further opined that "You know the November hearing was based on the assumption that the children lived in California. So if they were living in Michigan when that occurred and … that whole hearing was based under the assumption that the children were living in California, when they were, in fact, in Michigan, I question the wisdom of just kind [of] going with that." (*Tr. 24*)

In any event, Master DalPra's comment, at the beginning of the "Sixth of November" hearing (*Tr. 3*), that "I don't care whether it clears the docket up or not, counsel" would have been clearly audible to Judge Rauseo concerning any *de novo* review, by Judge Rauseo, after the February 18, 2022 hearing, and Judge Rauseo would have had an obligation, at that time, to identify any outstanding pleadings that remained unaddressed.

Judge Rauseo's Order on Family Systems Counseling

On February 23, 2022, Judge Rauseo entered an interim order requiring Family Systems Counseling, between Petitioner, and G.A., to take place with one of five counselors, all of whom were located in southern California. *ApxI. 178*.

On May 10, 2022, Judge Rauseo entered an *Order* (#554) on *Petitioner's Motion to Vacate Court Orders*, affirming (at ¶13) that "The Court's Order dated February 23, 2022 [requiring Family Systems Counseling in California] remains in full force and effect." *ApxI. 179*.

June 30, 2022 Motion(s) Hearing

On June 27, 2022 Petitioner filed *Petitioner's Expedited Motion to Schedule Nov 1, 2019 Motion for Ex Parte Relief for June 30, 2022 Hearing*. (#568). *ApxI. 186*.

At the June 30, 2022 hearing, the following exchange occurred (*Tr. 4*):

Mr. Albrecht: *And as a preliminary matter, I filed a motion to have an older pleading heard. Did you see that?*

Judge Rauseo: *That's not on the docket for today.*

Mr. Albrecht: *Okay.*

Judge Rauseo: *That's not on the docket for today, yeah.*

July 22, 2022 Orders

On July 22, 2022, Judge Rauseo finally denied *Petitioner's Ex Parte Motion for Contempt and to Compel (#364)*, that on November 1, 2019, Judge Leary had ordered "to be scheduled in the ordinary course." *ApxI. 190*.

On July 22, 2022, Judge Rauseo also ordered, *sua sponte*, that a three hour hearing on jurisdiction take place, despite that neither party had filed

any motion on this subject, and there were no pleadings before the court on this subject.

October 13, 2022 hearing

At the three hour October 13, 2022 hearing, that neither party requested, Mr. Albrecht stated to Judge Rauseo that "as you pointed out earlier, it is your job to resolve disputes. I think the simplest thing we could do moving forward for this case would be for you to sign attorney Fontaine's proposed order on jurisdiction because I'm not sure that we really have a dispute on jurisdiction." *Tr. 123-124*.

Summary of relevant facts

Petitioner has provided a relatively comprehensive history of relevant facts, to place the orders presently on appeal in their appropriate context. In short, however, rather than schedule an appropriate evidentiary hearing on *Petitioner's Motion* (#364) that was ordered "to be scheduled in the ordinary course," on November 1, 2019 by Judge Leary, over 2 and a half years later, Judge Rauseo instead scheduled, *sua sponte*, a three-hour hearing, that neither party asked for, during which Petitioner even requested that Judge Rauseo sign opposing counsel's proposed order, which Judge Rauseo refused to do.

STANDARD OF REVIEW

At issue in this case, *inter alia*, are multiple fundamental constitutional rights. In particular, those rights pursuant to Articles 2, 4, 8, 10, 14, 22, 32 and 35 of our New Hampshire State Constitution, with particular emphasis on the parental rights guaranteed by Article 2, the "equal protection" and "due process" rights guaranteed by Articles 10 and 35, respectively, and the right to prompt legal remedies guaranteed by Article 14.

In the first instance, some rights described by our New Hampshire State Constitution, such as the "natural rights" and "rights of conscience" in

Articles 2 and 4, are "not [even] 'conferred' by [it], but, rather, are 'declared, stated, asserted, as something inherent in the people—a right they had before this declaration of rights, as much as after.'" *State v. Mack*, 173 N.H. 793 (2020) (recognizing religious use of psilocybin is protected under the state constitution). Cf. *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418 (2006) (recognizing religious use of ayahuasca is protected under the federal constitution).

Further, N.H. Const. pt. 1, art. 2 "has been held to be so specific that it 'necessarily limits all subsequent grants of power to deal adversely with it.'" *Metzger v. Town of Brentwood*, 117 N.H. 497, 502 (1977) (quoting *Woolf v. Fuller*, 87 N.H. 64, 68 (1934)).

In particular, parenting rights, at issue in this case, are also protected under Article 2 of our State Constitution. This Honorable Court has a long history of recognizing parents' rights for the care and fundamental custody of their children. *In Re: Noah W.* , 148 N.H. 632 (2002). It has long been settled in New Hampshire jurisprudence that the right to parent one's child is guaranteed by Article 2. *State v. Robert H.* , 118 N.H. 713, 716 (1978). "Parental rights are natural, essential and inherent" within the meaning of Article 2. *In re: Guardianship Nicholas P.*, 162 N.H. 199, 203 (2011). The right of a parent to raise and care for their children is a fundamental liberty interest protected by Article 2. *In the Matter of Nelson & Horsley*, 149 N.H. 545 (2003). Indeed, "the loss of one's children can be viewed as a sanction more severe than imprisonment." *State v. Robert H.* at 716.

When determining whether relocation is in a child's best interest, New Hampshire courts should carefully analyze each of the seven factors set forth in *Tomasko v. Dubuc*, 145 N.H. 169 (2003); namely,

> *(1) each parent's reasons for seeking or opposing the move; (2) the quality of the relationships between the child and the custodial and noncustodial parents; (3) the impact of the move on the quantity and quality of the child's future contact with the noncustodial parent; (4) the degree to which the custodial parent's and child's*

> *life may be enhanced economically, emotionally, and educationally by the move; (5) the feasibility of preserving the relationship between the noncustodial parent and child through suitable visitation arrangements; (6) any negative impact from continued or exacerbated hostility between the custodial and noncustodial parents; and (7) the effect that the move may have on any extended family relations.*

In re Heinrich, 160 N.H. 650, 656 (2010).

Moreover, Article 10 of our State Constitution also provides for equal protection. "The law cannot discriminate in favor of one citizen to the detriment of another." *Opinion of the Justices*, 144 N.H. 374, 381 (1999), citing *State v. Pennoyer*, 65 N.H. 113, 114 (1889). Indeed, "the principle of equality pervades the entire [state] constitution." *Pennoyer* at 114.[32]

Moreover, this Honorable Court has also recognized, at least since *Pennoyer*, that "an enactment obnoxious to … the national constitution is in New Hampshire no more ineffective than it would be in its absence. The decisions of … federal court[s] are conclusive on the question of the validity of statutes under the federal constitution, and are authority to be weighed on the question of their validity under the constitution of [our] state." *Pennoyer* at 115.

Consequently, this Honorable Court need not necessarily directly reach any federal question, but may consider federal case law interpreting the U.S. Constitution as persuasive authority in interpreting analogous provisions in our State Constitution.

Further, in construing provisions of our State Constitution, this Honorable Court is not confined to federal constitutional standards, and may freely construe our State Constitution to recognize more rights than the federal constitution requires. *Carson v. Maurer*, 120 N.H. 925, 932 (1980).

32 Other courts have also cited *Pennoyer* in modern times as persuasive authority for equal protection arguments. See, e.g. *Baker v. State of Vermont* (Vt. 1999) 744 A.2d 864, one of the first judicial affirmations of the right of same sex couples to treatment equivalent to that afforded different sex couples.

Indeed, our New Hampshire Bill of Rights (1784) predates the United States Bill of Rights (1791) by seven years.

In reviewing claims of unconstitutional delay raised under Article 14, the factors this Honorable Court must consider are: (1) the length of delay; (2) the reasons for the delay; (3) a party's assertion of his or her right to a prompt hearing; and (4) prejudice to a party. *State v. Adams*, 133 N.H. 818, 824 (1991), citing *Barker v. Wingo*, 407 U.S. 514 (1972).

Article 35 of our State Constitution requires that "it is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit." Indeed, "failure to disclose to the parties the basis for … disqualification under [the Code of Judicial Conduct] will result in a disqualification of the judge." *Blaisdell v. City of Rochester*, 135 N.H. 589, 593-94 (1992). Moreover, insofar as an "objective, disinterested observer, fully informed of the facts, would entertain significant doubt that justice would be done in the case," this is also a violation of Article 35. *Tapply & Zukatis*, 162 N.H. 285, 297 (2011). To be sure, "we must continuously bear in mind that to perform its high function in the best way 'justice must satisfy the appearance of justice.'" *Blaisdell* at 593, quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954).

Moreover, pursuant to federal "due process" standards, "'under a realistic appraisal of psychological tendencies and human weakness,' the relevant consideration is whether something 'poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.'" *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 2255 (2009).

Consequently, this Honorable Court should also "ask the question[s] [United States Supreme Court] precedents require: whether, considering all the circumstances alleged, the risk [emphasis added] of bias [is] too high to be constitutionally tolerable." *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017)

(vacating the Nevada Supreme Court's judgment because it applied the wrong legal standard).

In addition, pursuant to *Liteky v. United States*, 510 U.S. 540, 555 (1994) "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings" *will* "support a bias or partiality challenge" (*Id.*) "if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible," (*Id.*) citing as an example of such a case, *Berger v. United States*, 255 U.S. 22 (1921), a World War I espionage case against German-American defendants.[33]

Finally, when reviewing provisions of the UCCJEA, this Honorable Court has previously observed that:

> In addition to our ordinary rules of statutory construction, we may consider the official comments to the UCCJEA. See *In the Matter of Scott & Pierce*, 160 N.H. 354, 359, 999 A.2d 229 (2010). The consideration of official comments is sensible because, as we have previously explained, "'the intention of the drafters of a uniform act becomes the legislative intent upon enactment.'" *Ball*, 168 N.H. at 137, 123 A.3d 719 (quoting *Hennepin County v. Hill*, 777 N.W.2d 252, 256 (Minn. Ct. App. 2010)). We may also consider the interpretation of the UCCJEA by other jurisdictions. See *id*. Opinions from courts in other jurisdictions are relevant "'because uniform laws should be interpreted to effect their general purpose to make uniform the laws of those states that enact them.'" *Id*. at 137-38, 123 A.3d 719 (quoting *Hill*, 777 N.W.2d at 257); accord *In the Matter of McAndrews & Woodson*, 171 N.H. 214, 220, 193 A.3d 834 (2018).

See *In re Guardianship of K.B.*, 172 N.H. 646, 649 (2019).

33 As the District Judge in *Berger* noted, "their [German] hearts are reeking with disloyalty," and "this … is the kind of a [person] that spreads … propaganda and it has been spread until it has affected practically all the Germans … this same kind of excuse of … offering to protect the German people is the same kind of excuse offered by the pacifists in this country."

SUMMARY OF ARGUMENT

Petitioner begins by arguing that, under the UCCJEA, any appeal of trial court findings determining "whether there has been a finding contempt relating to a complaint that there has been noncompliance with existing orders regarding any court-approved parenting plan," is a matter of right, and not of discretion; consequently, that N.H. Sup. Ct. R. 7(b) violates the UCCJEA in such circumstances.

Petitioner next argues that RSA 461-A:4-a should be construed so as "to establish specific deadlines within which a temporary hearing must be held and within which a final hearing must be ordered on petitions which are brought seeking the enforcement of existing orders or seeking findings of contempt relating to a complaint that there has been noncompliance with existing orders," regarding any court-approved parenting plan. Moreover, that there is also a constitutional mandate for such specific deadlines, pursuant to N.H. Const. pt. 1, art. 14.

Petitioner then argues that the trial court has committed multiple "due process" and "equal protection" constitutional violations, *inter alia*, in that Judge Mark S. Derby, former judge Julie Introcaso, and Marital Master Bruce F. DalPra, were all disqualified with regard to the May 9, 2019 hearing in this matter for their failure to disclose, *sua sponte*, the conflicts of interest concerning GAL Kathleen Sternenberg that were known, at that time, to all three judicial officers, but not to the parties.

Petitioner then argues that the trial court committed further "due process" and "equal protection" constitutional violations, *inter alia*, at the "Sixth of November" hearing, by refusing to hear Petitioner's November 1, 2019 *ex parte Motion*, that was ordered "to be scheduled in the ordinary course," while instead insisting that it re-hear Respondent's *ex parte Motion*, that had already been denied with a determination that "no hearing [was] required."

Insofar as Judge Rauseo eventually finally ruled on Petitioner's November 1, 2019 *ex parte Motion*, 2 years, 8 months, and 21 days after it was ordered "to be scheduled in the ordinary course," and without ever holding any hearing, essentially then declaring it to be "moot," Petitioner counters that such a ruling is a "textbook example" of one of the most important exceptions to mootness doctrine; namely, something that is "capable of repetition, yet evading review."

Petitioner further laments that that in this instant case, the parties' minor children S.A. and G.A. have been deprived of having any father, since at least Christmas 2018, which is not in their best interests, and further that this violates N.H. Const. pt. 1, art. 2.

Finally, Petitioner argues that the actions of Administrative Judge David King, violated multiple constitutional provisions, and concludes by asking whether "the ends of government are perverted, and public liberty manifestly endangered."

ARGUMENT

I. N.H. Sup. Ct. R. 7(B) violates RSA 458-A:35 and RSA 458-A:39 in multi-state diversity of citizenship cases.

This is a multi-state diversity of citizenship case involving New Hampshire, Massachusetts, California, and Michigan.

The parties' minor children S.A. and G.A. were both born in New Hampshire, and pursuant to RSA 458-A:12, New Hampshire made the initial child custody determination for the parties' children C.A., S.A., and G.A., all of whom were minors at the onset of this action.

After the onset of this action, the parties' three younger children, were first relocated from New Hampshire to California, and then later to Michigan.

Mr. Albrecht and the parties' older son P.A. continue to reside together in Nashua, NH. Notwithstanding recent orders of the trial court, pursuant to

RSA 458-A:13, New Hampshire retains (or ought to retain) exclusive, continuing jurisdiction. RSA 458-A:24 further requires that a "court of this state shall recognize and enforce a child-custody determination ..."

Much of the conflict between the parties arises out of multiple events that have occurred, in Massachusetts, at Collinsville Bible Church, concerning parental rights and responsibilities, as Respondent has traveled numerous times from either California or Michigan, to New England with the minor children, to attend Collinsville Bible Church.

The UCCJEA and RSA 458-A:35 ("Appeals"), require that "[a]n appeal may be taken from a final order in a proceeding under this subdivision in accordance with expedited appellate procedures in other civil cases *[emphasis added]*. Unless the court enters a temporary emergency order under RSA 458-A:15, the enforcing court may not stay an order enforcing a child-custody determination pending appeal."

RSA 458-A:39 ("Application and Construction)" requires that "in applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

By way of contrast, N.H. Sup. Ct. R. 3 defines that "an appeal from a final decision on the merits, other than the first final order, issued in, or arising out of, a domestic relations matter filed under RSA Title XLIII (RSA chapters 457 to 461-A)" is NOT a mandatory appeal.

Pursuant to N.H. Sup. Ct. R. 7(B), "the Supreme Court may, in its discretion, decline to accept an appeal, other than a mandatory appeal, or any question raised therein, from a trial court after a decision on the merits, or may summarily dispose of such an appeal, or any question raised therein, as provided in Rule 25. Unless otherwise provided by law or by these rules, an appeal from a trial court decision on the merits other than a mandatory appeal shall be by notice of appeal in the form of notice of appeal approved by

the supreme court for the filing of such an appeal ("Notice of Discretionary Appeal" form).

As set forth more fully, *infra*, N.H. Sup. Ct. R. 7(B) violates RSA 458-A:35 and RSA 458-A:39 in multi-state diversity of citizenship cases.

II. The UCCJEA requires that an appeal concerning the enforcement of a parenting plan is a matter of right, and not discretion.

Under federal due process the question of whether an appeal provided in State system is one of right or of discretion is also a federal question. *State v. Cooper*, 127 N.H. 119, 129 (1985) (quoting *Evitts v. Lucey*, 469 U.S. 387, 393, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985)).

Whether a Parenting Plan originates in New Hampshire, or a different state, enforcement provisions in RSA 461-A:4-a require that motions for contempt "shall be reviewed by the court" and RSA 458-A:24 requires that a "court … shall recognize and enforce a child-custody determination ..."

"The general rule of statutory construction is that the word 'may' makes enforcement of a statute permissive and that the word 'shall' requires mandatory enforcement." *City of Rochester v. Corpening*, 153 N.H. 571, 574 (2006). Cf. *Sutherland Statutes and Statutory Construction*.

Pursuant to the plain language of the relevant statutes, it is mandatory that New Hampshire courts shall enforce custody determinations at the request of a party. While an appeal may be taken, this is at the discretion of a party, not the court, because such an appeal may be taken accordance with expedited appellate procedures in other civil cases, the majority of which, by case type, are mandatory appeals pursuant to N.H. Sup. Ct. R. 7(A).

Further, RSA 458-A:39 ("Application and Construction)" requires that "in applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

New Hampshire is one of only nine states without an intermediate appellate court. The majority of states have one or more intermediate appellate courts (IACs), with over ninety such courts nation-wide. IAC jurisdiction varies from state to state, as does their role in each state's judicial system. However, IACs primarily provide an appeal of right and most do not have discretion to decline to hear an appeal filed with the court. *ApxVI*.

"Uniformity of law" under the UCCJEA requires than an appeal concerning enforcement of a child custody determination is a matter of right, and not discretion, insofar as the vast majority of states provide such appeals, as a matter of right, and any reasonable reading of RSA 458-A:35 and RSA 458-A:39 would construe these statutes also to provide, in New Hampshire, such an appeal by right, and not discretion.

Moreover, a "policy of hostility to the public acts of a sister State," is a violation of the federal Full Faith and Credit Clause. *Carroll v. Lanza*, 349 U.S. 408, 413 (1955). Insofar as RSA 458-A:39 further explicitly provides for uniformity of law, New Hampshire must look to the appellate procedures in other states, when construing RSA 458-A:35, and in determining whether an appeal concerning the enforcement of a parenting plan is one of right, or of discretion.

III. The trial court violated RSA 461-A:4-a

RSA 461-A:4-a ("Judicial Enforcement of Parenting Plan") requires that "Any motion for contempt or enforcement of an order regarding an approved parenting plan under this chapter, if filed by a parent, shall be reviewed by the court within 30 days."

On October 31, 2019, Respondent told the Sierra Madre Police in California that she "had full custody of the children," directly contrary to the court's *Parenting Plan* in effect at that time.

On November 1, 2019, Petitioner filed his *Motion for Ex Parte Relief*.

While the trial court did not provide *ex parte* relief, Judge Leary did order that "that the case shall be scheduled in the ordinary course," implying that Petitioner's *Motion* should be scheduled for the next hearing.

"In matters of statutory interpretation, [this Honorable Court] is the final arbiter of the intent of the legislature as expressed in the words of a statute considered as a whole." *State v. Etienne*, 163 N.H. 57, 35 A.3d 523, 535 (2011). "Absent an ambiguity [this Honorable Court] will not [normally] look beyond the language of the statute to discern legislative intent." *Id*.

Black's Law Dictionary (11th edition) defines a "review hearing" as simply a "hearing." However, the statute uses only the word "review" and not "review hearing." On the other hand, Black's Law Dictionary (11th edition) observes that the word "review" by itself is used primarily in the context of "reexamination of a subject or thing," and, in particular, typically in the context of appellate review.

Consequently, a review by this Honorable Court of the legislative record whereby the legislature enacted this statute is warranted to resolve any ambiguity concerning what RSA 461-A:4-a means by requiring "review." It is especially warranted because on April 18, 2006, in testimony before the New Hampshire Senate, the Honorable Michael H. Garner[34] quite reasonably construed the "proposed legislation" to mean:

> *If I understand the proposed legislation, it is to establish specific deadlines within which a temporary hearing must be held and within which a final hearing must be ordered on petitions which are brought seeking the enforcement of existing orders or seeking findings of contempt relating to a complaint that there has been noncompliance with existing orders.*[35]

34 The Honorable Michael H. Garner at that time was Marital Master Garner, and is now presently a sitting judge of the Circuit Court. It should be further noted that, while as Master Garner, he made the correct recommendations in *In re Kurowski*, 161 N.H. 578 (2011), concerning the negative effects of the "specific tenets of mother's faith" (*Id*.) that were "impacting [daughter's] feelings toward her father." (*Id*.), that the trial court utterly failed to do, in *this* instant case.

35 *ApxV. 101*.

Thus, the most natural reading of RSA 461-A:4-a, clearly born out by the legislative record, is to construe "review" to mean "review hearing" and "within 30 days" to mean that the legislature intended for the court, at a minimum, at least to schedule *some* kind of hearing, "within 30 days."

Cf. RSA 173-B:3, VII requiring that a "court shall hold a hearing within 30 days of the filing of a [domestic violence] petition under this section or within 10 days of service of process upon the defendant, whichever occurs later."

IV. The trial court violated N.H. Const. pt. 1, art. 14.

N.H. Const. pt. 1, art. 14 requires that "Every subject of this State is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws;" that is, legal remedies are to be free, complete, and prompt.

In 2004, the "Femley Report" stated "New Hampshire courts will continue to provide due process and equal protection of the law to all who have business before them as guaranteed by the United States Constitution and the New Hampshire Constitution."[36]

It further stated, "the Committee recommends … Case processing time standards will be established for all courts and made publicly available …"[37]

In any event, concerning claims of unconstitutional delay raised under article 14, the factors this Honorable Court must consider are: (1) the length of delay; (2) the reasons for the delay; (3) Petitioner's assertion of his right to a prompt hearing; and (4) prejudice to the Petitioner. *State v. Adams*, 133 N.H. 818, 824 (1991), citing *Barker v. Wingo*, 407 U.S. 514 (1972).

36 *ApxVI. 107.*
37 *Id.*

In this case, it has been 2 years, 8 months, and 22 days including the end date from when Petitioner filed his Motion on November 1, 2019, until the trial court issued its final order on July 22, 2022.

The reasons for the delay given by Judge Derby were that "Parties cautioned that 12-9-19 [DV] hearing is scheduled for 30 min & double-booked with another DV case, and should plan accordingly."

The reasons for the delay given by Master DalPra at the "Sixth of November" hearing were "I don't care whether it clears the docket up or not, counsel," and "who gives a fuck?"

The reasons for the delay given by Judge Rauseo were "That's not on the docket for today, yeah."

Nevertheless, on November 1, 2019, Petitioner asserted his right to a prompt hearing by explictly citing RSA 461-A:4-a and the full text of the statute at ¶2 of his *Motion*.

Finally, the delay caused extreme prejudice to Petitioner; and, more importantly, extreme prejudice to their daughter S.A., as set forth more fully below, in §VI-VII, *infra*.

V. The trial court erred in denying Petitioner's Motion for Reconsideration, in part, simply because it exceeded 10 pages.

N.H. Fam. Div. R. 1.2 allows that "As good cause appears and as justice may require, the family division may waive the application of any rule, except where prohibited by law," where "good cause is equivalent to what is 'reasonable and just.'" *In re D.O.*, 173 N.H. 48, 60 (2020).

Insofar as Petitioner needed to preserve multiple issues for appeal, in his *Motion for Reconsideration*, Judge Rauseo's opinion on this matter is just one more petty snipe, at Petitioner, a *pro se* litigant.

VI. The trial court's delay of 2 years, 8 months, and 21 days before finally denying Petitioner's ex parte motion, without holding any hearing, violated due process.

The arguments set forth in §IV, *supra*, are incorporated here, the same as if plead in full.

Further, previously on June 6, 2019, Judge Derby, then fully aware of the conflict of interest between Ms. Introcaso, and GAL Sternenberg, as was Master DalPra since 2014, failed to disclose this conflict to the parties when Judge Derby ruled on both parties' *Motions for Reconsideration* (#345, #346). *ApxI. 4-60*.

Indeed, because GAL Sternenberg, Master DalPra, Ms. Introcaso, and Judge Derby all knew of the conflict, and all failed to disclose it, all three[38] judicial officers were disqualified, at the May 9, 2019 hearing. *Blaisdell v. City of Rochester*, 135 N.H. 589, 593-94 (1992).

In addition, at the "Sixth of November" hearing, Master DalPra further decided to re-hear *Respondent's Motion Ex Parte Motion to Temporarily Suspend Petitioner's Parenting Time (#374)* that was already denied by Judge Patricia Quigley (#376), who had further already ordered (on November 22, 2019) that "Request for *ex parte* orders is denied. No hearing is required."

Article 10 of our State Constitution provides for equal protection. "The law cannot discriminate in favor of one citizen to the detriment of another." *Opinion of the Justices*, 144 N.H. 374, 381 (1999), citing *State v. Pennoyer*, 65 N.H. 113, 114 (1889). Indeed, "the principle of equality pervades the entire [state] constitution." *Pennoyer* at 114.

Insofar as the trial court refused, at the "Sixth of November" hearing, to hear Petitioner's *ex parte Motion* at all, that was ordered "to be scheduled in the ordinary course," but instead decided to re-hear Respondent's *ex parte Motion*, that was already denied with "no hearing required," this was a violation of Article 10.

38 Cf. *Buck v. Bell*, 274 U.S. 200 (1927) ("observing that 'Three generations of imbeciles are enough.'")

Moreover, these events were also a violation of Article 35, insofar as an "objective, disinterested observer, fully informed of the facts, would entertain significant doubt that justice would be done in [this] case." *Tapply & Zukatis*, 162 N.H. 285, 297 (2011).

VII. The trial court violated N.H. Const. pt. 1, art. 2.

On May 24, 2019, in the *Partello* matter[39], Judge Derby ordered that:

> *Court held a status conference/motion/review hearing on 5/24/19. Mr. Campbell's motion to reconsider the May 17, 2019 motion for a order on motion for forensic psychological evaluation is granted. Ms. Partello shall undergo a full forensic psychological evaluation with Dr. Douglas Johnson, PsyD at Green House Group in Manchester. Mr. Campbell shall pay for the cost in the first instance, subject to potential reallocation after the final hearing. GAL* [Sternenberg] *shall have access to process and shall receive the report confidentially and file it under seal. Court will review it in camera and make a decision as to disclosure at a later date upon motion by either party.*

By way of contrast, on June 6, 2019, in *Albrecht*, Judge Derby, denied Petitioner's request for reconsideration that the court "develop a new parenting plan that 'supports frequent and continuing contact between each child and both parents,' comports with RSA 461-A:4, VI, and is in the best interests of the children;"[40] and, "order the parties and their children to attend Family Systems Therapy; or as the parties otherwise agree."[41]

As a consequence, the parties' then minor children S.A. and G.A., have been left for all intents and purposes without a father, since Christmas 2018, to the present time, largely because Judge Derby refused to consider any therapeutic intervention whatsoever in *Albrecht*, all while ordering forced forensic psychological evaluations in *Partello*.

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39 See May 24, 2019 hearing transcript at 92-93 in *Campbell v. Partello*, No. 659-2018-DM-00702, another of the "nine cases."

40 See Prayer (E)

41 See Prayer (F)

While this is a clear violation of the equal protection and due process requirements of Articles 10 and 35 of our State Constitution; more importantly, the trial court has also further violated fundamental parenting rights that are protected by Article 2.

Indeed, the trial court has turned a blind eye to Respondent's conduct, now for over six years, in which she has simply refused, altogether, to follow the trial court's *Parenting Plan*, all while continuously "schlepping" the parties' children all over the entire country, with a particular focus on their continued attendance at, and influence by, Collinsville Bible Church in Dracut, Massachusetts, concerning which Petitioner does not agree.

Respondent wishes to ensure their children continue to adhere to the tenets of the "IFB religion" promulgated by Bob Jones University, at the expense of their children's relationship with their father. Cf. *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983).

As this Honorable Court previously held in *In re Miller*, 161 N.H. 630, 631 (2011):

> **Across the country, the great weight of authority holds that conduct by one parent that tends to alienate the child's affections from the other is so inimical to the child's welfare as to be grounds for a denial of custody to, or a change of custody from, the parent guilty of such conduct. A child's best interests are plainly furthered by nurturing the child's relationship with both parents, and a sustained course of conduct by one parent designed to interfere in the child's relationship with the other casts serious doubt upon the fitness of the offending party to be the custodial parent. As we have recognized, the obstruction by a custodial parent of visitation between a child and the noncustodial parent may, if continuous, constitute behavior so inconsistent with the best interests of the child as to raise a strong possibility that the child will be harmed.**

Respondent's conduct, from 10/29/2019 (Tuesday) through 11/4/2019 (Monday), including her false report to the Sierra Madre Police that "she advised she had full custody of the children," was, at the very least, "conduct

by one parent designed to interfere in the child[ren]'s relationship with the other [parent]," within the meaning of *Miller*, *supra*, regardless of whether it rose to the the level of "a sustained course of conduct," within the meaning of *Miller*, *supra*.

Further, the underlying facts of this instant case closely mimic the underlying facts of *Kurowski*. The trial court in *Kurowski* correctly ascertained that the mother's use of "Bob Jones University curriculum," and daughter's involvement in the "IFB" religion had a negative effect on the parent-child relationship between the daughter and their father, up to and including to the extent that "[daughter] was unhappy that her father does not love her enough to want to spend eternity with her by adopting her faith." *Kurowski* at 596.

Just as in *Kurowski*, Respondent even withdrew S.A. from public school in Michigan, to attend instead a small, private "IFB" school, using more "Bob Jones University curriculum," after Master DalPra recommended Respondent have sole decision making authority.[42]

Furthermore, Master DalPra did so despite prior third-party testimony at trial that Respondent talked about, "at one point, how what Dana had done has brought demons in and demons were banging on the window,"[43] and Petitioner's testimony that S.A. called him "Devil Dad."[44] Cf. *Kurowski* at 596.

Kurowski was correctly decided, and acknowledged that both parents have an interest in the religious upbringing of their children. However, *Kurowski* also correctly acknowledged that "the trial court may consider a parent's religious training of his or her child solely in relation to the welfare of the child." *Kurowski* at 595. Further "evidence was presented [in *Kurowski*] that daughter exhibited difficulty interacting with others,

42 January 20, 2021 *Order*, later vacated, but in effect long enough to allow Respondent to withdraw S.A. from her Michigan Public School, in favor of exclusive exposure to "IFB" educational materials, including, *inter alia*, Bob Jones curriculum.

43 Transcript of August 7, 2017 hearing at 153.

44 Transcript of August 7, 2017 hearing at 78.

particularly her father, when they did not agree with her religious convictions." *Kurowski* at 596.

Insofar as this instant case even involves nearly identical religious beliefs on the part of one parent; i.e., those of the "Bob Jones" or "IFB" religion, with allegations by the other parent that these beliefs have harmed parent-child relationships, it is, in effect, "Kurowski 2.0."

Unlike the original *Kurowski* case, however, it has suffered over six years of unconstitutional delay, all while the parties' minor children have been "schlepped" throughout multiple jurisdictions, and all while the judicial officer who presided over most of it, Master DalPra, has openly stated, "who gives a fuck?" after he appointed a rogue GAL, with undisclosed conflicts of interest, and who earned over $10,000 in fees for her "investigation" concerning relocation to California.

Finally, insofar as S.A. has now finally turned 18, and has "aged out," this only serves to underscore Petitioner's argument concerning the extreme prejudice and harm this delay has caused to Petitioner and to S.A.

Insofar as Judge Rauseo now wishes to "cover" for the horrific and extraordinarily damaging unconstitutional trial court delays arising, *inter alia*, from judicial misconduct, by now declaring the issue moot, our United States Supreme Court disagrees. "A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Chafin v. Chafin*, 133 S.Ct. 1017, 1019 (2013) (internal citations omitted).

Because the Albrechts continue vigorously to contest even such questions as whether Respondent will agree to provide S.A.'s phone number or high school graduation photographs to Petitioner, which Respondent so far continues to refuse to do, this dispute is still very much alive. Cf. *Chafin* at 1019.

And, of course, their youngest daughter, G.A., still a minor, remains caught in a bitter battle between Respondent's efforts to stop at nothing to prevent G.A. from having any contact with her father, and Petitioner's efforts to pursue all legal means at his disposal, for G.A. to have a father.

More importantly for other New Hampshire citizens, however, those issues raised concerning multi-state diversity of citizenship parental rights under the UCCJEA, the statutory construction of RSA 461-A:4-a, and unconstitutional delay pursuant to N.H. Const. pt. 1, art. 14, also constitute a textbook example of one of the most important exceptions to mootness doctrine; namely, "alleged errors" (e.g. unconstitutional delay) that may be "capable of repetition, yet evading review." *In re Kathleen M.*, 126 N.H. 379, 381 (1985), citing *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911). Cf. Roe v. Wade, 410 U.S. 113 (1973) noting that "Pregnancy provides a classic justification for a conclusion of nonmootness." While our United States Supreme Court has subsequently overturned *Roe* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), *Dobbs* did not disturb how *Roe* addressed justiciability and mootness.[45]

VIII. The trial court violated the Fourteenth Amendment to the United States Constitution.

All judicial misconduct and failure to disclose conflicts of interest, pursuant to those standards of review previously described, also constitute a violation of the Fourteenth Amendment to the United States Constitution.

IX. The actions of Circuit Court Administrative Judge David King violated N.H. Const. pt. 1, art. 14, and N.H. Const. pt. 1, art. 35.

Very shortly after the "Sixth of November" hearing, Judge King was fully aware of the precise nature of at least two of the inappropriate

45 Petitioner further opines that if the *Dobbs* Court saw fit to rectify the decades of horror promulgated by the *Roe* Court wherein parent-child relationships were destroyed by *the hands of the United States Supreme Court*, perhaps this Honorable Court might also see fit to rectify the 6+ years of horror promulgated by GAL Sternenberg, the trial court, and Administrative Judge King in this instant case, wherein parent-child relationships also have been destroyed, by *the hands of the trial court*.

comments made by Master DalPra, as set forth in Judge King's November 13, 2020 email.

Moreover, Judge King also was fully aware, that eScribers, would be leaving Master DalPra's comments out of the official transcript of the "Sixth of November" hearing,[46] yet took no steps to rectify this situation, to ensure the accuracy of the "Sixth of November" transcript.

Moreover, in Judge King's August 26, 2022 sworn deposition, Judge King was asked, by his former law partner Philip Waystack,[47] about Judge King's November 13, 2020 email, wherein the following exchange occurred:[48]

Mr. Waystack: *Did you tell the Judicial Conduct Committee?*

Judge King: *Did I tell the Judicial Conduct Committee what?*

Mr. Waystack: *About what you had found regarding the transcript in the Albrecht case?*

Judge King: *Yes.*

Mr. Waystack: *Okay. Did you provide this email[49] to the Judicial Conduct Committee.*

Judge King: *No.*

In any event, if Chief Administrative Judge King actually had told "the Judicial Conduct Committee" about "what [he] had found regarding the transcript in the *Albrecht* case," pursuant to Judge King's sworn testimony, then why was it necessary for this Honorable Court subsequently to order three different versions of this "Sixth of November" transcript?

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46 See November 12, 2020 email from Michele Lilley (eScribers) to Kathleen M. Yee (NHJB) stating that"Of course we are not going to transcribe that however, the ordering party has also ordered the audio."

47 See, e.g. https://en.wikipedia.org/wiki/David_D._King_(jurist)#Legal_career

48 See August 22, 2022 deposition of Judge King, at 26. *ApxIV*.

49 Presumably this refers to Judge King's November 13, 2020 email?

Why didn't this Honorable Court receive an accurate transcript, the first time it was ordered, in Appeal No. 2021-0192, on November 30, 2021?

Why was it necessary for this Honorable Court, to order a second, revised version of the "Sixth of November" transcript, in Appeal No. 2021-0192? (December 10, 2021 Order).

Why wasn't the third version (144 pages) of the "Sixth of November" transcript, docketed in this appeal on December 20,2022, made available to the parties and this Honorable Court, more expeditiously?

Moreover, if Chief Administrative Judge King actually had told the JCC about "what [he] had found regarding the transcript in the *Albrecht* case," pursuant to Judge King's sworn testimony, then why did the JCC dismiss Master DalPra's self-report, JC-20-062-G, on February 16, 2021?

After the JCC dismissed Master DalPra's self-report, JC-20-062-G, on February 16, 2021, and copied Judge King on this dismissal, why did Judge King then continue to remain silent about Master DalPra?

Why won't the New Hampshire Judicial Branch release the complete, and unredacted, August 26, 2022 deposition of Judge King?

If an "objective, disinterested observer, fully informed of the facts," were to attempt to ascertain the answers to these questions, "would [they] entertain significant doubt that justice would be done in [this] case?" *Tapply & Zukatis*, 162 N.H. 285, 297 (2011). N.H. Const. pt. 1, art. 35.

Regardless, Petitioner placed an order for the "Sixth of November" transcript on the day of the hearing. Subsequently, both parties, and this Honorable Court, were treated "like a mushroom" by Judge King concerning what ought to have been disclosed, immediately, but was not, concerning this transcript.

Insofar as it took Petitioner nearly two years to obtain the third, and 144-page version of the "Sixth of November" transcript, this also constitutes a separate, and distinct violation of N.H. Const. pt. 1, art. 14 for similar

reasons set forth in §IV, *supra*. It (1) took almost two years; (2) was caused by Judge King's inaction; (3) was expected promptly, insofar as Petitioner ordered a 3-day rush transcript the day of the hearing; and (4) was extremely prejudicial against Petitioner, who, had he known, could have raised this issue *prior to* Respondent's first request for a one-year DV extension, granted *ex parte* by Judge Curran, and now on its third appeal, No. 2022-0284, and *prior to* any parenting order issued by the trial court on January 20, 2021, that then had to be later vacated.

Finally, pursuant to N.H. Const. pt. 1, art. 8, Judge King is a "magistrate[] and officer[] of government," who is "at all times accountable to [the people]," (Id.) and is their "substitute[] and agent[]."

Pursuant to N.H. Const. pt. 1, art. 10, what did Judge King actually tell the Judicial Conduct Committee, concerning "what [he] had found regarding the transcript in the *Albrecht* case," and how does it comport with Judge King's August 22, 2022 sworn deposition?

Pursuant to Article 10, have Judge King's actions caused "the ends of government [to be] perverted, and public liberty [to be] manifestly endangered?"[50]

50 "The simplest and most obvious interpretation of [Article 10], if sensible, is most likely that meant by the people [at the time of] its adoption," in 1784. *Duncan v. State*, 166 N.H. 630, 640 (2014). For a more developed analysis of Articles 8 and 10 of our New Hampshire State Constitution, this Honorable Court may refer to the *amicus* brief docketed on October 8, 2022 in *Laurie Ortolano v. City of Nashua*, No. 2022-0237. To the degree it contains any argument or constitutional analysis that is also relevant to this instant case, such argument is incorporated by reference herein, the same as if plead in full.

If multiple Family Division litigants, are now seeking properly to construe Article 10, and they do so pursuant to N.H. Const. pt. 1, arts. 22, 32, is this "criminal mischief,"[51] or is it:

> *"traffic[ing] in conspiracies, and today's what I would refer to as a circus, Your Honor, is no exception. On the cars parked in front of the courtroom this morning belonging to the people that you see here, there's a sheet that says, 'Jail Introcaso' in large letters. There are large signs, two of them that say, 'right of revolution.' There are signs saying, 'stop corruption and stop the guardian ad litem.'"*[52]

Or is it a peaceful attempt, by the people, for *some* sort, *any* sort, of "effectual means of redress?" For "the doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind." Article 10.

Moreover, concerning New Hampshire Family Division caseloads, time standards, all relevant statutory and constitutional requirements for due process and equal protection, investigations of judicial misconduct, and statements (even sworn!) by judicial officers, are the taxpayers of New Hampshire presently being subjected to any "lies, damned lies, or statistics?"[53]

Or, in the alternative, will this Honorable Court take such steps as are necessary to ensure that Family Division litigants, instead, will enjoy all such "due process" and "equal protection" rights as are afforded them pursuant to the "spirit of equality that pervades the entire state constitution," and that has been recognized by this Honorable Court for more than one hundred years?

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51 Photo taken on September 9, 2021. See also related police report. *ApxI. 173*.

52 Directly quoted from the September 9, 2021 hearing transcript, *Campbell v. Partello*, at 17.

53 *Supra* note 50.

CONCLUSION

For the foregoing reasons, Petitioner asks this Honorable Court to construe RSA 461-A:4-a so as "to establish specific deadlines within which a temporary hearing must be held and within which a final hearing must be ordered on petitions which are brought seeking the enforcement of existing orders or seeking findings of contempt relating to a complaint that there has been noncompliance with existing orders," regarding any court-approved parenting plan.

Moreover, to establish that there is also a constitutional mandate for such specific deadlines, pursuant to N.H. Const. pt. 1, art. 14.

Moreover, to establish that in this instant case, that the trial court erred in failing to schedule a hearing on Petitioner's November 1, 2019 *ex parte* Motion within 30 days.

Moreover, to establish that under the UCCJEA, any appeal of trial court findings determining "whether there has been a finding contempt relating to a complaint that there has been noncompliance with existing orders regarding any court-approved parenting plan," is a matter of right, and not of discretion.

Moreover, to establish that Marital Master Bruce DalPra, was aware of the conflict of interest between Ms. Introcaso, and Ms. Sternenberg, since 2014, which both Ms. Introcaso and Ms. Sternenberg each acknowledged, in open court, in the *Sobell* matter, also in 2014.

Moreover, to establish that in this instant case, that Marital Master Bruce F. DalPra, Ms. Julie Introcaso, and Judge Mark Derby, were all aware of the conflict of interest between Ms. Introcaso and GAL Sternenberg, at the time of the May 9, 2019 hearing in this matter, that all three judicial officers failed to disclose it, and that consequently all three judicial officers were disqualified with regard to the May 9, 2019 hearing in this matter.

Moreover, to establish that in this instant case, the parties' minor children S.A. and G.A. have been deprived of having any father, since at least Christmas 2018, which is not in their best interests, and further violates N.H. Const. pt. 1, art. 2.

Moreover, to establish that in this instant case, there have been multiple constitutional violations by Chief Circuit Court Administrative Judge David King, arising from the "Sixth of November" hearing.

Consequently, that this Honorable Court ought to exercise its "general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses" pursuant to RSA 490:4; further, to exercise this "general superintendence" to specially assign a justice of either the Supreme or of the Superior Court to sit in the Family Division, and to be newly assigned to this case, but who is otherwise to be completely independent of Circuit Court Administrative Judge David King, so as to avoid even the appearance of impropriety.

Further, to order that all such order(s) of the trial court determined to be inconsistent with these findings, or otherwise in violation of any state or federal constitutional provision, are to be vacated.

Finally, to remand this case for any such further proceedings as may be necessary, consistent with such findings and orders.

ORAL ARGUMENT

Appellant-Petitioner Dana Albrecht requests fifteen (15) minutes for oral argument on this case.

Respectfully submitted,

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March 15, 2023.

CERTIFICATE OF WORD COUNT

I, Dana Albrecht, hereby certify that the main text of this brief, from the "Statement of Facts" through the "Conclusion," excluding footnotes and quotations, contains fewer than 9,500 words, as determined by the word count of the computer program used to prepare this brief.

DANA ALBRECHT

March 15, 2023

CERTIFICATE OF SERVICE

I, Dana Albrecht, hereby certify that a copy of this brief shall be served on all parties of record through the New Hampshire Supreme Court's electronic filing system.

DANA ALBRECHT

March 15, 2023

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THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

HILLSBOROUGH COUNTY — 9th CIRCUIT – FAMILY DIVISION - NASHUA

In the Matter of:
Dan Albrecht, Petitioner and Katherine Albrecht (NKA Minges), Respondent
Case No. 659-2016-DM-00288

ORDER ON MOTION

On June 27, 2022, the Petitioner filed an Expedited Motion to Schedule the November 1, 2019 Motion for *Ex Parte* Relief (#366)[1] for June 30, 2022 Hearing (#568).

The Petitioner filed an Ex-parte Motion for Contempt and to Compel (#364) on November 1, 2019. The Petitioner did not make a request for hearing in the Motion. The Respondent filed an Objection to the Motion also on November 1, 2019 (#365). Consistent with RSA 461-A:4-a, the Court reviewed the *Ex Parte* Motion on November 1, 2019, and issued an order denying the request for *ex parte* relief, finding that there was no showing of immediate danger of irreparable harm and directing that the case shall be scheduled in the ordinary course.

The majority of the Plaintiff's requested relief in November 1, 2019 Motion (#364) is either moot or has been already addressed. Grace is attending counseling in Michigan and the Court Order dated February 23, 2022 provides for Family Systems Counseling for Grace and the Petitioner (Index #515), which addresses prayers for relief D and E in the 2019 Motion (#364). The May 10, 2022 Court Order allows for communication between the Petitioner and Grace via email, resolving prayer for relief G. Prayers for relief F[2] and H[3] are moot, at this juncture.

Based on the Petitioner's Ex-parte Motion for Contempt and to Compel (#364), the Respondent's Objection (#365) and the Court record, the Court finds that the Respondent did not willfully violate the September 2017 Parenting Plan. Paragraph 4 of the Respondent's Objection (#365) details her reasoning for removing the children from school in October 2019, which the Court finds acceptable. The Respondent and the children were coping with the loss of the children's maternal grandmother several months earlier. She addressed the issue with the school and made arrangements for the make-up work. Accordingly, the Petitioner's requests the court to find the Respondent in Contempt of the joint decision making provision in the parenting plan and/or the provision requiring the parents to promote a healthy and beneficial relationship with the children are DENIED. Having determined that the Respondent is not in contempt of the parenting plan, the Petitioner's request for relief I (requesting attorney fees) is moot.

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[1] The Court docket has the Petitioner's Ex-parte Motion for Contempt and to Compel as index #364, not #366
[2] The Petitioner requested the Respondent to disclose the children's location as they were on vacation.
[3] The Petitioner requested parenting time on the east coast with the children prior to their return to California on November 5, 2019.

In light of the above, the Court finds that the hearing on the Petitioner's Ex-parte Motion for Contempt and to Compel (#364) is not necessary, as the issues contained in the subject motion have been addressed. Accordingly, Petitioner's Expedited Motion to Schedule November 1, 2019 Motion for Ex Parte Relief for June 30, 2022 Hearing is DENIED.

So Ordered:

7-22-2022
Date

Hon. Kevin P. Rauseo, Judge

THE STATE OF NEW HAMPSHIRE

9th Circuit – Family Division – Nashua

Dana Albrecht and Katherine Albrecht

659-2016-DM-00288

Petitioner's Motion for Reconsideration of Order on Motion (#587)

NOW COMES the Petitioner, Dana Albrecht, *pro se*, and respectfully requests this Honorable Court for reconsideration of its *Order on Motion* (#587) and, in support thereof, further states:

1. In its *Order on Motion* (#587) dated July 22, 2022, this Honorable Court has overlooked or misapprehended certain facts and matters of law.
2. On November 1, 2019, the parties' minor children were Grace (then age 12) and Sophie (then age 15).
3. Respondent did not notify Petitioner, in advance, that she wished to remove their minor children from school, for an entire week, to transport them across the country from California to New England from 10/29/2019 (Tuesday) through 11/4/2019 (Monday), inclusive.
4. Respondent did not give Petitioner any opportunity, whatsoever, to participate in Respondent's unilateral decision to remove their children from school in California.
5. As previously set forth at ¶6 of *Petitioner's Replication* (doc #369)[1] dated 11/11/2019, "Mr. Albrecht was unable to reach their children, their children were missing from school, Mr. Albrecht was unable to reach Dr. Albrecht, and Dr. Albrecht's own counsel had even been unable to reach Dr. Albrecht for over two days."

1 The Petitioner has relied on the docket numbers specified in a recent Odyssey Case Summary Sheet to prepare this pleading. Insofar as the docket numbers entered in Odyssey are different from the docket numbers the clerk has handwritten on the pleadings, this is outside of Petitioner's control.

6. On Thursday, October 31, 2019 at 11:53 am, concerning Ms. Albrecht, Ms. Wendy Borrun wrote, *via email*:

> On Thu, Oct 31, 2019 at 11:53 AM Wendy Borrun <wborrun@lawyersnh.com> wrote:
>
> > She called when I was on the phone. I tried calling back but couldn't connect with her. I am now waiting for her to call me back.

7. On Wednesday, October 30, 2019 at 4:35 pm, Mr. Joseph Caulfield wrote:

> **From:** Joseph Caulfield [mailto:joseph@josephcaulfield.com]
> **Sent:** Wednesday, October 30, 2019 4:35 PM
> **To:** Wendy Borrun
> **Subject:** Fwd: Fwd: Sophie
>
> Wendy,
>
> Please see below.
>
> J

8. On Wednesday, October 30, 2019, at 4:27 pm, Mr. Albrecht wrote:

> From: **Dana Albrecht** <dana.albrecht@hushmail.com>
> Date: Wed, Oct 30, 2019 at 4:27 PM
> Subject: Re: Fwd: Sophie
> To: Joseph Caulfield <joseph@josephcaulfield.com>
>
> Has Wendy been able to reach Katherine?

9. On Tuesday, October 29, 2019, at 4:40 pm, Mr. Joseph Caulfield wrote:

> ---------- Forwarded message ---------
> From: **Joseph Caulfield** <joseph@josephcaulfield.com>
> Date: Tue, Oct 29, 2019 at 4:40 PM
> Subject: Re: Sophie
> To: Wendy Borrun <wborrun@lawyersnh.com>
>
> Thank you, Wendy!
> I'll forward this right to Dana.
> J

10. On Tuesday, October 29, 2019, at 3:51 pm, Ms. Wendy Borrun wrote:

> On Tue, Oct 29, 2019 at 3:51 PM Wendy Borrun <wborrun@lawyersnh.com> wrote:
>
> > Hi Joseph,
> >
> > I spoke with Katherine last Friday and she didn't mention anything to me about Sophie going anywhere. In any event, I have forwarded this to Katherine. I also tried calling her, but her voicemail was full.
> >
> > Regards,
> >
> > Wendy J. Borrun, Paralegal

11. On Tuesday, October 29, 2019, at 1:28 pm, Mr. Joseph Caulfield wrote:

> ---------- Forwarded message ---------
> From: **Joseph Caulfield** <joseph@josephcaulfield.com>
> Date: Tue, Oct 29, 2019 at 1:28 PM
> Subject: Fwd: Sophie
> To: Michael Fontaine, Esq. <wborrun@lawyersnh.com>
>
> Wendy,
>
> Please see below.
> Can you assist?
> J

12. On Tuesday, October 29, 2019, at 11:38 am, Mr. Albrecht wrote:

> **Subject:** Fwd: Sophie
> **From:** Dana Albrecht <dana.albrecht@hushmail.com>
> **Date:** 10/29/19, 11:38 AM
> **To:** Joseph Caulfield <joseph@josephcaulfield.com>
>
> Do Mike or Wendy know why Sophie is "going to be gone most of the week?" (see below)
>
> -------- Forwarded Message --------
> **Subject:**Sophie
> **Date:**Tue, 29 Oct 2019 11:35:18 -0400
> **From:**Dana Albrecht <dana.albrecht@hushmail.com>
> **To:**Katherine Albrecht <kma@katherinealbrecht.net>
> **CC:**lightfoot@hushmail.com
>
> Katherine,
>
> Why is Sophie "going to be gone most of the week?" (see below)
>
> Please respond.
>
> Thanks,
> -Dana

13. On Tuesday, October 29, 2019, at 10:35 am, Mr. Nathan McAleese wrote:

Subject: Unit 3 Test
From: Nathan McAleese <n_mcaleese@mhs-hs.org>
Date: 10/29/19, 10:35 AM
To: Sophie Albrecht <albrecht.sophie@maranathastudents.org>
CC: dana.albrecht@hushmail.com, lightfoot@hushmail.com

Hey Sophie,
Because you missed the scheduled test makeup yesterday, we need to schedule a time for you to take the test before you return. If I remember correctly, you were going to be gone most of the week and I need all students to take the test within three days of each other to prevent any academic integrity issues on the original assessment or any retakes. What we'll need to do is schedule a time where you will have an hour to work through the test on your own. Since it is an open book/note test it shouldn't be too much of a problem. But I'll need to open up the test for you to give you access.
I think the best way to do this would be to schedule a precise time you'll be able to sit down to take the test, then I'll send you the password and open the test for responses for 55 minutes. After 55 minutes I'll just close the test again and you'll get your score after it's graded like everyone else. You'll be able to use your notes for the test, but nothing outside your notes (not sure anything would help much anyway) and I'll just have to trust you to put your notes away for the essay portion (Which I don't really have a problem with).

Does that sound good?

--
Nathan McAleese
Theology Teacher

MARANATHA HIGH SCHOOL
A COLLEGE PREPARATORY CHRISTIAN SCHOOL
169 S. Saint John Avenue
Pasadena, CA 91105
626.817.4000 (Ext 1911)
www.maranatha-hs.org

14. As set forth at ¶7 of *Petitioner's Replication* (doc #369), "under such circumstances, a routine child safety check by the police is entirely appropriate. Mr. Albrecht requested only that the police locate their children and ensure their immediate safety. He did not claim they were in any danger."

15. Indeed, there is a related police report, CAD 1910310022, from the Sierra Madre Police Department:

SIERRA MADRE POLICE DEPARTMENT
242 WEST SIERRA MADRE BOULEVARD
SIERRA MADRE, CA 910242395
1-626-355-1414

CFS EVENT DETAIL
CAD EVENT NUMBER: 1910310022
CALL TYPE: WELFARE

CALLS FOR SERVICE INFORMATION

AGENCY	CAD EVENT NUMBER	CASE NUMBER	AGENCY NUMBER	DATE AND TIME	CALL TYPE	CALL TYPE EXPLAINED	FINAL CALL TYPE
SMPD	1910310022			10/31/2019 10:21	WELFARE	WELFARE CHECK	

LOCATION	APT/SUITE/BOX	CITY	RESPONSE ZONE	RESPONSE AREA
730 W ALEGRIA AVE		SM		

CALL SOURCE	LOCATION COMMENT
P	

COMMENTS

RP IS CONCERNED FOR THE WELFARE OF HIS CHILDREN [redacted] AND [redacted] WHO HAVE NOT BEEN TO SCHOOL FOR 3 DAYS. RP IS UNABLE TO CONTACT HIS CHILDREN OR THE ATTORNEY FOR THE MOTHER.

[redacted] ATTENDS GOODEN SCHOOL IN THE CITY. ATTEMPTED TO CONTACT HOWEVER NO ANSWER AT THE SCHOOL.

RP IS ADVISING HE HAS CONTACTED [redacted] IN PASADENA FOR DAUGHTER [redacted] AND THEY ADVISED SHE HAS NOT BEEN TO SCHOOL AND HAD AN EXCUSED ABSENCE BY THE MOTHER

MOTHER'S NAME IS [redacted]
CELL PHONE# [redacted]

RP LAST SPOKE TO MOM THROUGH ATTRONEYS LAST FRIDAY.
----------[CAD1/10920 10/31/19 10:33:44]
10-21 PROVIDED GOES TO VOICEMAIL
----------[CAD1/10920 10/31/19 10:53:30]
MADE CONTACT WITH GOODEN SCHOOL AND THEY ADVISED THE CHILD HAS NOT BEEN IN SCHOOL HOWEVER THERE ARE NO SUSPICIOUS CIRCUMTANCES TO FURTHER INVESTIGATE
----------[CAD1/10920 10/31/19 10:55:35]
THE MOTHER OF THE CHILDREN CALLED AND ADVISED SHE IS ON VACATION WITH HER CHILDREN AND IS NOT HOME. SHE ALSO ADVISED HER ATTORNEYS ADVISED HER EX HUSBAND THAT THEY ARE ON VACATION AND HE IS ONLY CALLING TO DISTURB THEM. SHE ADVISED SHE HAS FULL CUSTODY OF THE CHILDREN.

REPORTING PARTY	AREA CODE	PHONE NUMBER
DANA ALBRECHT	[redacted]	

REPORTING ADDRESS
NEW HAMPSHIRE

PRIMARY UNIT	DISPOSITION	DISPOSITION COMMENTS		
P2				
P911	DISPATCH	ARRIVED	CLEARED	CLOSED
	10:20:35	10:28:29	10:52:48	10:52:48

UNITS STATUS RECORDSxxx

TIME	UNIT	STATUS	COMMENT	LOCATION	DISPO
10/31/2019 10:20:35 AM	P2	D		[redacted]	
10/31/2019 10:23:44 AM	L1	D			
10/31/2019 10:28:29 AM	P2	AR			
10/31/2019 10:28:29 AM	L1	AR			
10/31/2019 10:41:13 AM	P2	C4			
10/31/2019 10:48:00 AM	L1	C	CLEARED BY CAD1		ASST
10/31/2019 10:52:48 AM	P2	C	CLEARED BY CAD1		UNF

LINKED NAMES

UNIT	REASON	NAME (OR DL)	DOB
	RP	ALBRECHT, DANA	

RMS-162 v1.9 PRINTED: 6/30/2020 10:05:16 AM BY: 10915 FOR OFFICIAL USE ONLY PAGE 1 of 1

16. This report, *supra*, indicates that on October 31, 2021, Respondent stated to the Sierra Madre Police:

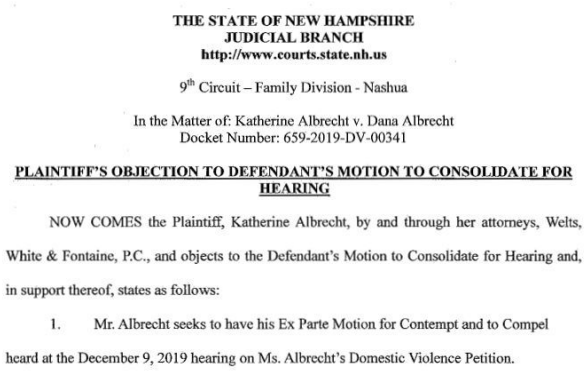

[CAD1/10920 10/31/19 10:55:35]
THE MOTHER OF THE CHILDREN CALLED AND ADVISED SHE IS ON VACATION WITH HER CHILDREN AND IS NOT HOME. SHE ALSO ADVISED HER ATTORNEYS ADVISED HER EX HUSBAND THAT THEY ARE ON VACATION AND HE IS ONLY CALLING TO DISTURB THEM. SHE ADVISED SHE HAS FULL CUSTODY OF THE CHILDREN.

17. However, while Respondent stated to the Sierra Madre Police that "**She advised she had full custody of the children,**" this statement is false.

18. Respondent's statement constitutes "unsworn falsification" pursuant to NH Rev Stat § 641:3 (2015). It is also a violation of Cal. Veh. Code General Provisions § 31, requiring that "No person shall give, either orally or in writing, information to a peace officer while in the performance of his duties under the provisions of this code when such person knows that the information is false."[2]

19. Moreover, this Honorable Court's claim in its recent *Order* (at ¶2) that "The Petitioner did not make a request for hearing" is false.

20. Indeed, the record is clear, that Petitioner requested *Petitioner's Ex Parte Motion for Contempt and to Compel* (#364), to be heard at the December 9, 2019 hearing on Ms. Albrecht's Domestic Violence Petition, to which Respondent objected (doc #15):


THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

9th Circuit – Family Division - Nashua

In the Matter of: Katherine Albrecht v. Dana Albrecht
Docket Number: 659-2019-DV-00341

PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO CONSOLIDATE FOR HEARING

NOW COMES the Plaintiff, Katherine Albrecht, by and through her attorneys, Welts, White & Fontaine, P.C., and objects to the Defendant's Motion to Consolidate for Hearing and, in support thereof, states as follows:

1. Mr. Albrecht seeks to have his Ex Parte Motion for Contempt and to Compel heard at the December 9, 2019 hearing on Ms. Albrecht's Domestic Violence Petition.

2 Pursuant to the federal Full Faith and Credit Clause, this Honorable Court is required to consider both the relevant New Hampshire and California statutes. To do otherwise constitutes an unconstitutional "policy of hostility to the public acts of a sister State." *Carroll v. Lanza*, 349 U.S. 408, 413 (1955). However, concerning whether there is any conflict, or to determine which State's law controls, this Honorable Court may then take into account any relevant territorial, personal, and subject matter jurisdiction at issue. In choosing whether to defer to the law of the *situs*, or the law of the forum, this Honorable Court may choose to conduct an analysis according to *Barrett v. Foster Grant Co.*, 450 F.2d 1146, 1150-1152 (1st Cir. 1971), that upholds and summarizes the five factors for such analysis originally set forth in *Clark v. Clark*, 107 N.H. 351 (1966).

21. The docket summary sheet, from the related DV case, No. 659-2019-DV-00341, also indicates that:

11/19/2019	Motion to Consolidate Party: Attorney Caulfield, Joseph, ESQ *Defendant's Motion to Consolidate for Hearing*	*Index #10*
12/02/2019	Objection Party: Attorney Fontaine, Michael J., ESQ *Plaintiff's Objection to Defendant's Motion to Consolidate for Hearing*	*Index #15*
12/04/2019	Denied (Judicial Officer: Derby, Mark S) *Parties cautioned that 12-9-19 hearing is scheduled for 30 min & double-booked with another DV case, and should plan accordingly.*	
12/04/2019	Notice of Decision *mailed to parties*	*Index #16*

22. On December 4, 2019, Judge Mark S. Derby denied Petitioner's request to have a hearing on Petitioner's *Motion* (#364), ordering (doc #16) that:

NOTICE OF DECISION

JOSEPH CAULFIELD, ESQ
CAULFIELD LAW & MEDIATION OFFICE
126 PERHAM CORNER ROAD
LYNDEBOROUGH NH 03082-6522

Case Name: **In the Matter of Katherine Albrecht v. Dana Albrecht**
Case Number: **659-2019-DV-00341**

Enclosed please find a copy of the Court's Order dated December 04, 2019 relative to:

Defendant's Motion to Consilidate for Hearing - Motion is Denied. Parties cautioned that 12-9-19 hearing is scheduled for 30 min & double-booked with another DV case, and should plan accordingly.

Derby, J

23. However, after ordering that "Parties cautioned that 12-9-19 hearing is scheduled for 30 min & double-booked with another DV case, and should plan accordingly," Judge Derby then proceeded to hold a three day trial, in the DV case, yet this Honorable Court has never scheduled any hearing for *Petitioner's Motion* (#364).

24. In so doing, Judge Derby's actions, *supra*, violated RSA 461-A:4-a, N.H. Const. pt. 1, arts. 2, 14, 15, 35, and the Fourteenth Amendment of the United States Constitution, as more fully described, *infra*.

25. RSA 461-A:4-a requires that "Any motion for contempt or enforcement of an order regarding an approved parenting plan under this chapter, if filed by a parent, shall be reviewed by the court within 30 days."

26. N.H. Const. pt 1., art. 14 requires that legal remedies occur "promptly, and without delay; conformably to the laws." Concerning claims of unconstitutional delay raised under article 14, the factors this Honorable Court must consider are: (1) the length of delay; (2) the reasons for the delay; (3) Petitioner's assertion of his right to a prompt hearing; and (4) prejudice to the Petitioner. *State v. Adams*, 133 N.H. 818, 824 (1991), citing *Barker v. Wingo*, 407 U.S. 514 (1972).

27. In this case, it has been 2 years, 8 months, and 22 days including the end date from when Petitioner filed his *Motion* on November 1, 2019, until this Honorable Court issued its order on July 22, 2022.

28. The reasons for the delay given by Judge Derby were that "Parties cautioned that 12-9-19 hearing is scheduled for 30 min & double-booked with another DV case, and should plan accordingly."

29. Petitioner asserted his right to a prompt hearing by citing the full text of RSA 461-A:4-a in his original Motion (at ¶2) on November 1, 2019.

30. The delay has been extremely prejudicial to Petitioner (and, most importantly, to his daughter Sophie!) insofar as this Honorable Court has allowed Sophie to "age out" of these proceedings, without ordering any therapeutic intervention.

31. Further, insofar as this Honorable Court claims the matter is now moot, because it has finally ordered therapeutic intervention for Grace, this is disingenuous. By its inaction, this Honorable Court has potentially caused lifelong emotional trauma for Sophie, by refusing for nearly three years to provide any remedy to repair her relationship with her father.

32. Indeed, our New Hampshire Supreme Court has previously "recognized that the loss of one's children can be viewed as a sanction more severe than

imprisonment." *In re Noah W.*, 148 N.H. 632, 636 (2002) (internal citations omitted).

33. "Decisions regarding the custody and rearing of … children is a fundamental right which is protected by the due process provisions of the State and Federal Constitutions." *Provencal v. Provencal*, 122 N.H. 793, 797 (1982). In proceedings involving a parent's relationship with their children, the parent has a right to be heard that is guaranteed by both the State and Federal Constitutions. *Provencal*, citing *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) and Amendment XIV of the US Constitution. This right involves the right to call and cross-examine witnesses, to be informed of all adverse evidence, and to challenge such evidence. *Goldberg v. Kelly*, 397 U.S. at 267-68.

34. Indeed, parental rights are protected under N.H. Const. pt. 1, art. 2. The New Hampshire Supreme Court has a long history of recognizing parents' rights for the care and fundamental custody of their children. *In Re: Noah W.*, 148 N.H. 632 (2002). It has long been settled in New Hampshire jurisprudence that the right to parent one's child is guaranteed by our Constitution, N.H. Const. pt. 1, art. 2. *State v. Robert H.* _____, 118 N.H. 713, 716 (1978). "Parental rights are natural, essential and inherent" within the meaning of Part 1, Article 2 of the New Hampshire Constitution. *In re: Guardianship Nicholas P.*, 162 N.H. 199, 203 (2011). The right of a parent to raise and care for their children is a fundamental liberty interest protected by N.H. Const. pt. 1, art. 2. *In the Matter of Nelson & Horsley*, 149 N.H. 545 (2003).

35. "The United States Constitution [also] protects the fundamental right of parents to make decisions concerning the custody, care and control of their children, including a child's education and religious upbringing." *In re Kurowski*, 20 A. 3d 306, 316 N.H. (2011), citing *Troxel v. Granville*, 530 U.S. 57 (2000). Indeed, "parenting rights [are] protected under [the] Due Process Clause of [the] Fourteenth Amendment [of the United States Constitution]." *Id*.

36. Furthermore, the New Hampshire State Constitution is at least as protective of individual liberties as the Federal Constitution. *In the Matter of Jeffrey G. & Janette P*., 153 N.H. 200, 205 (2006). Indeed, our New Hampshire Supreme Court has "previously determined that part I, article 15 [of the State

Constitution] is at least as protective of individual liberties as the fourteenth amendment [of the United States Constitution]." *In re Tracy M.*, 137 N.H. 119, 122 (2006). (internal citations omitted).

37. There is a presumption that both parties are fit parents, and "There is a presumption that fit parents act in the best interests of their children." *Troxel v. Granville*, 530 U.S. 57, 68 (2000).

38. Nevertheless, according to the "best interests" standard, RSA 461-A:6, I(f) requires that this Honorable Court also consider "the support of each parent for the child's contact with the other parent as shown by allowing and promoting such contact …"

39. Indeed, our New Hampshire Supreme Court has also held that:

> *"Across the country, the great weight of authority holds that conduct by one parent that tends to alienate the child's affections from the other is so inimical to the child's welfare as to be grounds for a denial of custody to, or a change of custody from, the parent guilty of such conduct. A child's best interests are plainly furthered by nurturing the child's relationship with both parents, and a sustained course of conduct by one parent designed to interfere in the child's relationship with the other casts serious doubt upon the fitness of the offending party to be the custodial parent. As we have recognized, the obstruction by a custodial parent of visitation between a child and the noncustodial parent may, if continuous, constitute behavior so inconsistent with the best interests of the child as to raise a strong possibility that the child will be harmed."*

See *In re Miller* , 20 A. 3d 854, 862 N.H. (2011). (internal citations omitted)

40. Respondent's conduct, from 10/29/2019 (Tuesday) through 11/4/2019 (Monday), inclusive, at the very least, is "conduct by one parent designed to interfere in the child's relationship with the other [parent]," within the meaning of *Miller*, *supra*, regardless of whether it rises to the the level of "a sustained course of conduct," within the meaning of *Miller*, *supra*.

41. Consequently, Respondent's conduct, is not only a violation of the joint decision making provisions of the parenting plan, but is a violation of the provisions requiring each parent to promote a healthy and beneficial relationship with the other parent, for the reasons set forth, *supra*.

42. Further, this Honorable Court has turned a blind eye to Respondent's conduct, now for over six years, in which she has simply refused, altogether, to follow this Honorable Court's Parenting Plan.

43. Indeed, this case has also been hopelessly tainted by judicial misconduct, beginning with the very first order issued by former judge Paul S. Moore, continuing with the recommendation by Marital Master Bruce F. DalPra that GAL Kathleen Sternenberg be appointed, despite Master DalPra's knowledge, since 2014, of conflicts of interest between GAL Sternenberg, and former judge Julie Introcaso, who ordered the appointment of GAL Sternenberg.

44. Insofar as Master DalPra eventually made explicit, his attitude toward this case, of "who gives a f**k," by time of the November 6, 2020 hearing, it is Petitioner's position that Master DalPra has held a similar attitude, albeit without openly vocalizing and memorializing it for the audio record, for some time prior.

45. Indeed, the Judicial Conduct Committee's recent *Caution* (JC-21-068-G) states:

> *Ms. Girard*[3] *had alleged inter alia that Master DalPra had "allowed constant harassment (of her) from Mr. Silva" over the years and had complained of a number of condescending comments allegedly made by Master DalPra occurring at hearings before him on or about July 6, 2020, October 29, 2020 and August 9, 2021 such as referring to her case as "a thorn in my side"; likening a review of her case to "re-opening a can of worms"; and "... I am the judicial officer who has been blessed with hearing this dispute here this morning."*
>
> *These comments were confirmed by the Committee upon its review of the audio recordings of the above hearings.*

3 See *Silva v. Silva*, No. 659-2015-DM-00731.

46. Indeed, with regard not only to the multiple instances of judicial misconduct, but the nearly three year delay of this Honorable Court before issuing any substantive ruling on Petitioner's November 1, 2019 Motion, this would cause "an objective, disinterested observer, fully informed of the facts, [to] entertain significant doubt that justice would be done in the case." *Tapply v. Zukatis*, 27 A. 3d 628, 637 N.H. (2011).

47. Moreover, it is also a violation of the Federal Due Process Clause insofar as "under a realistic appraisal of psychological tendencies and human weakness," the issues pose "such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Caperton v. AT Massey Coal Co., Inc.*, 556 U.S. 868 (2009).

48. Furthermore, under the federal Due Process Clause, "due process of law … may sometimes [also] bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its function in the best way 'justice must satisfy the appearance of justice.'" *In re Murchison.*, 349 U.S. 133, 136 (1955), citing *Offutt v. United States*, 348 U.S. 11, 14 (1954).

49. Indeed, under United States Supreme Court Precedents, the federal Due Process Clause "may sometimes [also] demand recusal even when a judge 'ha[s] no actual bias.'" *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (internal citations omitted), vacating a judgment of the Nevada Supreme Court because it applied the wrong legal standard.

50. Finally, under federal due process the question of whether an appeal provided in the State system is one of right or of discretion is also a federal question. *State v. Cooper*, 127 N.H. 119, 129 (1985) (quoting *Evitts v. Lucey*, 469 US 387, 393, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985)).

51. RSA 461-A:4-a was supposed to have afforded Petitioner a hearing on his November 1, 2010 Motion within 30 days, which the trial court did not provide.

52. Furthermore, however, Petitioner's Motion also concerned the enforcement of a parenting order across multiple states. Consequently, the UCCJEA would also apply.

53. In particular, the UCCJEA and RSA 458-A:35 ("Appeals"), require that "[a]n appeal may be taken from a final order in a proceeding under this subdivision in accordance with expedited *[emphasis added]* appellate procedures in other civil cases. Unless the court enters a temporary emergency order under RSA 458-A:15, the enforcing court may not stay an order enforcing a child-custody determination pending appeal."

54. Consequently, insofar as the trial court has violated any such laws, as well as any state or federal constitutional provisions, as set forth in ¶¶1-53, *supra*, by its failure to provide a timely hearing, and to allow either party the right to expedited *[emphasis added]* appellate review, in a timely fashion, this also constitutes a separate, and distinct, violation of these same state and federal constitutional provisions, as set forth in ¶¶1-53, *supra*.

55. Finally, insofar as any prior decisions of this Honorable Court have been "egregiously wrong from the start" and "deeply damaging," then recent United States Supreme Court precedent requires they be overturned. *Dobbs v. Jackson Women's Health Organization,* 597 U.S. (2022).[4]

56. Indeed, to the degree any such prior decisions have also resulted from an "unending adherence to … abuse of judicial authority," (*Id.*) then such decisions are even more explicitly unconstitutional, pursuant to *Dobbs*, and are now subject to *de novo* review.

4 Opinion issued June 24, 2022.

WHEREFORE, the Petitioner respectfully requests that this Honorable Court provide the following relief:

A) Reconsider its July 22, 2022 Order on Motion (#587); and,

B) Find Respondent in contempt of the Parenting Plans; or,

C) Schedule an evidentiary hearing on Petitioner's November 1, 2019 Motion; and,

D) Set forth the reasons for its decision in a written narrative order; and,

E) For other such relief as this Court deems fair and equitable.

Respectfully submitted,

_____

DANA ALBRECHT
Petitioner Pro Se
131 D.W. Hwy #235
Nashua, NH 03060
(603) 809-1097
dana.albrecht@hushmail.com

August 5, 2022

CERTIFICATE OF SERVICE

I, Dana Albrecht certify that this Motion has been served on Michael J. Fontaine, Esq., counsel for Katherine Albrecht, via email and postal mail on this 5th day of August 2022.

_____

DANA ALBRECHT