

11) Dr. Fyfe asked Mr. Harrington to sign a document entitled “Special Advocate Contract for Service” (sic) which he signed on December 30, 2003. This document indicates that Mr. Harrington was to pay 50 per cent of the amount that Dr. Fyfe billed.

12) As Dr. Fyfe notes in his report, “The SA has reviewed an enormous number of documents provided by Sean Harrington.” Toward the bottom of page six of the report, Dr. Fyfe states, “During the SA investigation a dispute arose in which the SA requested that Sean pay for the additional time assessing his submitted material. Mr. Harrington resisted and the court ordered payment. This only added to conflict between Mr. Harrington and those involved in making recommendations and decisions concerning the family. Sean filed a grievance against the SA during this investigation. He has refused to pay the court ordered fees. The SA decided to write off these fees and finish the investigation in the best interest of Shelby.”

13) Dr. Fyfe wrote a letter to the Honorable Jane Tidball, the district court judge who heard issues pertaining to the divorce case, stating, “Attached you will find a list of the documents I have received from Sean Harrington. Reviewing these documents has been a difficult and labor intensive task as they are replete with footnotes, addendum (sic), and legal terminology. The sheer volume of these documents has led me to conclude that Mr. Harrington should be responsible for the fees incurred...”

14) On page 12 of his SA report, Dr. Fyfe addresses how he believes the cost of a parenting coordinator should be split between the parents. “Costs for the PC should be set at 80% for Sean and 20% for Christy. The court should strictly monitor payments for services.”

15) According to an Order signed by Judge Tidball on January 31, 2005, “On May 4, 2004, the Court entered an Order requiring that the Respondent pay all future fees directly attributable to the Special Advocate’s time spent reviewing documents submitted by Mr. Harrington...”

16) In my experience, it is unusual for a special advocate to ask the Court to reapportion his or her fees. A reapportionment of special advocate fees is usually considered at final orders upon the motion of one or both of the parties.

17) Dr. Fyfe first informed Mr. Harrington that he wanted the client to pay for all of the time he spent reviewing records that he submitted. He did so without court authority, and his request was contrary to the Court’s order. When Mr. Harrington refused to deviate from the Court’s order, Dr. Fyfe contacted Judge Tidball.

18) According to Section 6.04(b) of the Ethical Principles of Psychologists and Code of Conduct 2002 promulgated by the American Psychological Association, “Psychologists’ fee practices are consistent with law.”

19) Dr. Fyfe requested that the Court reapportion his fees after performing the work for which he believed Mr. Harrington should be totally responsible (i.e. a review of records that took 6.5 hours, according to Dr. Fyfe's billing statement) without giving Mr. Harrington the opportunity to either withdraw the records before the fee was incurred or contact the Court for direction.

20) In my opinion, Dr. Fyfe's advocating for the interests of one parent (Ms. Ryan) over the other (Mr. Harrington) is an indication of bias on his part. In my opinion, bias of this sort usually leads to problems in an SA's relationship with the "unsupported parent" as occurred in this case.

21) In my opinion, Dr. Fyfe's requirement that Mr. Harrington be totally responsible for payment of the time that the SA reviewed records that he provided would be likely to inhibit the flow of written information used by the SA when performing the investigation.

22) A review of Dr. Fyfe's billing statement reveals that he charged Mr. Harrington an additional 6.5 hours time to prepare a report on June 7, 2004. It is my understanding that he did not bill Ms. Ryan a similar amount and that Mr. Harrington has been asked to pay 100 per cent of Dr. Fyfe's fee for report writing. I have not been provided a copy of Ms. Ryan's billing statement. If it is true, however, that Dr. Fyfe billed Mr. Harrington for report writing and not Ms. Ryan, it would be my opinion that the SA has violated the Court's order regarding additional charges to Mr. Harrington (which only describes how charges for reviewing records provided by the father should be apportioned), and would therefore be a violation of Section 6.04(b) of the Ethical Principles of Psychologists and Code of Conduct 2002 promulgated by the American Psychological Association and below the standard of care for special advocates in the Denver metropolitan area.

23) As was noted above, Mr. Harrington filed a grievance against Dr. Fyfe during the course of the special advocate evaluation. Dr. Fyfe continued to serve as the special advocate despite the grievance.

24) A review of the transcript of a voice message that Dr. Fyfe left on Mr. Harrington's voice mail on May 28, 2004, reveals that Dr. Fyfe stated, "'Going through the file, I realized there is another matter that is important to me that needs to be addressed immediately. Ah, apparently, you have -er- filed a grievance against me with the grievance board. Um, most likely it would be kicked out because they don't take jurisdiction on special advocate matters because of the court related nature of the - of the - of my work..."

"But I still need you to send a letter to them saying that we have settled this. And I would like you to carbon me at: 303 232 1473.

"Let's take care of this right away so I can ah expedite my work with the file. Thanks."

25) When a grievance is filed against a special advocate, he or she should, in my opinion, determine whether or not the SA is capable of continuing to provide services in an unbiased fashion. In my experience, it is very difficult for a special advocate to remain unbiased once a grievance has been filed.

26) The American Psychological Association states in section 3.06 of its “Ethical Principles of Psychologists and Code of Conduct 2002”, “Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologist or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation.”

27) In my opinion, a special advocate should never ask a person he or she is evaluating to notify the Grievance Board that they have reached a settlement regarding an issue in dispute because such a request is coercive given the power imbalance between the SA and the complainant within the domestic case. For Dr. Fyfe to have asked Mr. Harrington to contact the Grievance Board on his behalf is, in my opinion, an inappropriate violation of a professional boundary and below the accepted standard of care for mental health professionals serving as special advocates.

28) Furthermore, Dr. Fyfe appears to manipulate Mr. Harrington by linking his request that Mr. Harrington write a letter to the Grievance Board with his moving forward with his responsibilities as a special advocate. In my opinion, his attempt to manipulate Mr. Harrington is below the accepted standard of care for a mental health professional serving as a special advocate in the Denver metropolitan area.

29) Section 9.01(a) of the Ethical Principles of Psychologists and Code of Conduct 2002, promulgated by the American Psychological Association states, “Psychologists base the opinion contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings.”

30) Section 9.01(b) of the Ethical Principles of Psychologists and Code of Conduct 2002 states, “Except as noted in 9.01(c), psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements and conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions and recommendations.”

31) Dr. Fyfe did not meet with Mr. Harrington face-to-face despite Mr. Harrington’s willingness to travel to Denver from out of state. Dr. Fyfe’s billing records indicate that

he spoke with Mr. Harrington on three separate occasions for one hour each time. These “meetings” occurred by telephone.

32) It is generally accepted in the psychological and psychiatric communities in the Denver metropolitan area that a valid psychological evaluation of an individual requires a face-to-face meeting between the evaluator and the person being evaluated. In my opinion, Dr. Fyfe’s failure to meet with Mr. Harrington face-to-face falls below the accepted standard of care of special advocates in the Denver metropolitan area.

33) Dr. Fyfe did not document in his report why he did not meet with Mr. Harrington face-to-face. He similarly did not clarify the probable impact that the lack of face-to-face meetings had on his conclusions and recommendations. In my opinion, his failure to document the limitations of his evaluative process and the probable impact of his not conducting face-to-face meetings with Mr. Harrington falls below the aspirational guidelines promulgated by the American Psychological Association.

34) Dr. Fyfe met with Ms. Ryan (Mr. Harrington’s former spouse) face-to-face on three separate occasions.

35) When Dr. Fyfe wrote his report, Mr. Harrington was newly married to Ms. Tanittha Rungwattanajinda. It is standard practice for special advocates in the Denver metropolitan area to include step-parents in the investigation process, particularly when parenting time is an issue.

36) On page 9 of his SA report, Dr. Fyfe states, “Sean is in a new marital relationship. The SA determined that a phone interview with is (sic) wife would be insufficient in order to provide additional data at this time...” Thus, Dr. Fyfe appears to consider telephone interviews an insufficient method of obtaining data.

37) According to his billing statement, Dr. Fyfe did not interview Ms. Rungwattanajinda face-to-face. In my opinion, his failure to include Ms. Rungwattanajinda in the investigation process falls below the accepted standard of care for special advocates in the Denver metropolitan area.

38) It is generally accepted in the psychological and psychiatric communities in the Denver metropolitan area that a valid evaluation of a parent-child relationship requires the direct observation of that relationship by the examiner.

39) Dr. Fyfe did not observe Mr. Harrington with his daughter, Shelby. He similarly did not observe Shelby with Ms. Rungwattanajinda. In my opinion, his failure to observe Shelby with her father and stepmother is below the accepted standard of care for special advocates in the Denver metropolitan area.

40) Even though Dr. Fyfe did not observe Shelby with her father and stepmother, he observed her with her mother on two separate occasions. In my opinion, Dr. Fyfe's having observed one parent and the child but not the other parent with the child is an indication of bias.

41) According to Appendix A of his special advocate report, Dr. Fyfe reviewed certain documents during the course of his investigation that were used when he arrived at his conclusions and recommendations. I have attached a copy of this document as Exhibit C.

42) Assuming that Dr. Fyfe listed all of the documents he used to arrive at his conclusions and recommendations in Appendix A of his special advocate report, he did not use the following documents even though they were provided by Mr. Harrington:

a) A report prepared by Christopher Gordon, M.D. who evaluated Mr. Harrington psychiatrically during April, June, and July of 2001.

b) A report prepared by Aaron S. Townsend, Ph.D., a clinical psychologist who treated Mr. Harrington during a hospital stay at the Colorado Mental Health Institute at Fort Logan, dated July 10, 2000, and other Fort Logan records.

c) Letters written by Mr. Harrington to Dr. Fyfe dated January 2, February 10, March 17 (two letters), April 23, and April 28, 2004.

43) On page 7 of his report Dr. Fyfe states, "Christy has raised significant issues about Sean's mental health. These issues have been evaluated thoroughly by the SA... It is noted that the SA came to view Sean as emotionally intense, highly defended, extremely narcissistic, rigid, idiosyncratic in his thinking and paranoid."

44) On page 17 of his report Dr. Fyfe states, "Sean's mental health difficulties have been well documented. His allegation that he is functioning better now appears to have some merit... The SA however found Sean to be argumentative, paranoid, and narcissistic..."

"The SA notes that there are two contrasting viewpoints concerning Sean's mental health. One is the conclusion reached by the first SA that Sean moved from a serious disorder to an adjustment disorder. Apparently his treating psychiatrist reported this to Ms. VanNote at the time of her investigation. There is, however, a later letter from the same psychiatrist (Dr. Gordon) indicating that Sean has significant mental health difficulties, which may lead to the likelihood of a long term disability. On a positive note, this has not been the case. Sean has been able to maintain employment. He does however remain secretive and wholly convinced of a conspiracy. For example, he would not allow the SA to know his address or reveal his local phone number to (sic) because he is convinced that mother and/or her attorney would use this information to harass him in some manner. Sean also described devoting 'thirty to forty hours per week' (to) further develop his legal position. This obsessive behavior is, at the very least, poor decision-making on Sean's

part, and most likely indicative of the kind of psychological problems Sean exhibits, i.e., manic behavior, obsessive rumination, and narcissistic preoccupation...”

45) On page nine of his report Dr. Fyfe opines, “The SA believes that father clearly has mental health problems, which should be assessed by a local psychiatrist in order to determine the appropriateness of ongoing treatment and/or medication. It is further noted that father does not handle disappointment or frustration well...”

46) On the top of page ten of his report Dr. Fyfe opines, “...His intense focus on himself is narcissistic and hints at a personality disorder, although, as stated above, the exact diagnosis should be determined locally over time.”

47) On page ten of his report Dr. Fyfe states, “Sean should immediately select a psychiatrist from his health plan who would conduct an evaluation of his overall mental health functioning...”

48) When evaluating a parent’s mental status, it is generally accepted within the Denver mental health community that an evaluator should interview the parent, obtain mental health records, and speak with at least the parent’s last treating psychotherapist.

49) Dr. Fyfe did not perform a psychological evaluation of Mr. Harrington during the course of his special advocate investigation.

50) Dr. Fyfe did not obtain records from psychiatric hospitals to which Mr. Harrington had been admitted including West Pines, Lutheran Hospital, St. Joseph’s Hospital, and a psychiatric hospital in Massachusetts.

51) Dr. Fyfe did not speak with any of the mental health professionals who were treating or previously treated Mr. Harrington.

52) In my opinion, Dr. Fyfe did not perform a psychological evaluation of Mr. Harrington sufficient to allow him to render an opinion regarding Mr. Harrington’s mental status within reasonable psychological probability.

53) In the “Recommendations” section of his report, Dr. Fyfe presents a fairly detailed plan regarding the reunification of Mr. Harrington and his daughter including a recommendation that the visits be supervised at least initially.

54) In my opinion, Dr. Fyfe did not have sufficient information regarding Mr. Harrington’s mental status at the time of the investigation to make a determination regarding the nature of his psychological illness and whether or not his symptoms were of sufficient severity to warrant supervised parenting time.

55) In my opinion, Dr. Fyfe should have obtained all of Mr. Harrington's psychiatric records from the previous five years and spoken with at least Dr. Gordon before formulating his opinion regarding the nature and severity of Mr. Harrington's psychiatric illness.

56) In my opinion, Dr. Fyfe should have had a clear picture of Mr. Harrington's psychiatric difficulties before making a parenting time recommendation.

57) In a memo to Dr. Fyfe dated January 2, 2004, Mr. Harrington identifies Dr. Robert Cherney as a potential witness. In my opinion, Dr. Fyfe should have spoken with Dr. Cherney, a clinical psychologist who met with Mr. Harrington and Shelby during the summer of 2001 before making a parenting time recommendation.

58) Mr. Harrington informed Dr. Fyfe that he believed that Ms. Ryan was attempting to alienate Shelby from him.

59) To rule out the presence of "parental alienation" (or efforts to alienate), a special advocate should make a determination regarding whether or not the parent in question suffers from a psychiatric disorder.

60) On page 17 of his report Dr. Fyfe states, "The SA found mother to be reasonable and logical in her presentation. She did not present, as Sean has alleged, as an alienating parent..."

61) There is no indication in Dr. Fyfe's report or the other records I reviewed that the SA either performed a psychological evaluation of Ms. Ryan or obtained information from other mental health professionals who had performed an evaluation of her mental status. In my opinion, Dr. Fyfe's omission of an assessment of Ms. Ryan's mental status falls below the accepted standard of care of special advocates in the Denver metropolitan area.

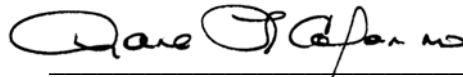
62) On page 10 of his report Dr. Fyfe states, "The current SA has concluded that the past SA erred in not properly expressing concern about father's emotional and mental health functioning. The SA also believes that data was readily available in order for her to consider Sean's problematic behavior, which was apparent through interaction with Sean during the SA investigation..."

63) Dr. Fyfe's order of appointment does not instruct him to evaluate the work of Ms. VanNote, the first special advocate assigned to the case. His statement that she erred regarding her assessment of Mr. Harrington's mental status despite having had readily available data is beyond the scope of his appointment, and so is inappropriate.

64) Dr. Fyfe's report criticizes Mr. Harrington but does not address the role that Ms. Ryan has played in the problems leading to the high degree of conflict between the

parents. In my opinion, Dr. Fyfe's omission of significant discussion regarding her contribution to the problem is an indication of bias.

FURTHER YOUR AFFIANT SAYETH NOT.

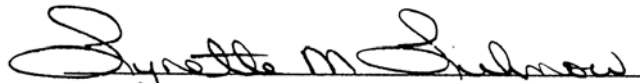


Dana L. Cogan, M.D.

Subscribed and sworn to before me this 4th day of May 2005, by Dana L. Cogan, M.D.

WITNESS my hand and official seal.

My Commission expires: 6-11-05.



Notary Public