

<p>El Paso County Combined Courts Court Address: 270 S. Tejon Colorado Springs</p> <hr/> <p>Appellant-Plaintiff Kris K. Stewart 2213 N. Chestnut St. Colorado Springs. Colorado 80907 v. Appellee-Defendant Dr. Mark Hoffman ATTORNEY FOR MARK HOFFMAN: DENIS LANE JR. 1912 WEST COLORADO AVE. COLORADO SPRINGS, CO 80904 PHONE: (719) 636-1017 FAX: (719) 635-4571</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorney or Party Without Attorney (Name and Address):</p> <p>Kris K Stewart 2213 N. Chestnut St. Colorado Springs, CO 80907</p> <p>Phone Number: <input type="text"/> E-mail: <input type="text"/></p>	<p>District Court Case # 08-CV0194 Div. 2PR</p> <p>County Court Case # 07C009Div. G</p>
<p>APPEAL TO THE DISTRICT COURT</p>	

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STATEMENT OF CASE AND RELEVANT FACTS

In 2004, I was involved in a child custody dispute before Magistrate Robert Erler. Magistrate Erler ordered both parties to undergo psychological evaluation. The GAL, Erin Glenn wanted me to see a psychiatrist for this procedure, but I was unable to find one. She told me that she knew a good Psychologist, Dr. Mark Hoffman. I met with Dr. Hoffman and entered into a verbal contract with him for him to do a psychological evaluation. This contract is evidenced by the canceled check that I have provided to the court that is dated September 13, 2004, and bears the notation "intak[e] psych eval." He told me after our intake session that he could do a much better job for me if he were appointed Special Advocate. (Note; Special Advocate is now known as "CFI".

I had no idea what a Special Advocate was, but he insisted that he could really help me if he were appointed. At that time I had no idea that this was in violation of CJD 04-08 that prohibits dual roles. He was appointed per a motion by the GAL on September 17.

My wife had fled to California after making several verbal and written threats to kill both herself and my son, and I was naturally beside myself with fear and grief.

In one meeting Dr. Hoffman told me that I must pay him a \$7000.00 "retainer." The Court had made no orders regarding his payment, or how it was to be divided between the parties. I was very reluctant to make this payment, as I was in financial straits at the time, and would have to mortgage my home to come up with this amount. Dr. Hoffman warned me that my son was in grievous an imminent danger and told me that if I did not pay, the Court would order it anyway. He also led me to believe that he would be working for me, rather than the Court, and that it would be favorable for me if I payed him out-of-court He told me that it was "just the cost of a used car", and if I really loved my son I would pay it gladly. He also told me that he was the

only one that had the experience and skill to help get my son out of danger. At various times, Dr. Hoffman demanded other payments from me, eventually totaling \$9454.00. At no time did the Court make any oral or written statement concerning Dr. Hoffman's fees, even though some time later, I did make a motion to the Court asking for an order to assess and apportion fees but the Court chose to ignore my request.

About a month after I paid him his "retainer" Dr. Hoffman took a trip to California to visit his daughter, and made a side trip to interview my wife, and had me pay him the full travel expenses in advance. While he was in California, he called me on the telephone and told me that my wife was being uncooperative, and that things were going favorably for me, but that if I did not deposit \$1000.00 cash in his bank account immediately, and have the bank teller call him to confirm the deposit, he would immediately stop investigating. I deposited the money, had the teller confirm it, and then Dr. Hoffman came straight home.

I had begun to grow suspicious of Dr. Hoffman because he would say very strange things in our meetings, and would completely contradict in one meeting, things that he had solemnly stated in a previous one. Therefore I purchased a digital voice recorder, so that I could keep a record of what was actually said.

On January 7, 2005, Dr. Hoffman asked me to come to his office to talk for a few minutes. This "few minutes" turned into a 2 hour and 50 minute harangue where he tried to do therapy on me, give me spiritual guidance, and accuse me of the most bizarre and noxious crimes and sexual perversions. He went on and on, about strip joints (which I definitely do not visit), masturbation voyeurism, etc. He told me about *his* (**yes, his**) Sexual addiction, pornography addiction, drug and alcohol abuse, years of domestic abuse and criminal history.

He "diagnosed" me as being a "sociopath" and told me that if I ever were to be around my son, he would surely inherit this disorder from me, through "The Sins Of The Fathers." He told me that I was full of sin that I had never gotten clean from, and that he was a prophet of God, and

God was telling him that I must drop my custody case immediately. I recorded this meeting, and the recording is part of the evidence that I wish to present in court.

After this meeting I told Dr. Hoffman that I was unwilling to work with him any more. He delayed, and delayed his report to the Court until I finally filed a MOTION TO SET HEARING. He e-mailed me his report the day before the hearing. His report was full of the most scurrilous slander and defamation that I had ever seen. Not only did Dr. Hoffman fabricate allegations that I had committed sexual and criminal misconduct, but had fabricated confessions, purportedly by me admitting to these offenses. Fortunately, I had recorded our entire meeting of January 7, and am able to prove incontrovertibly that he had made these horrible accusations up, and, of course completely fabricated the “confessions”. For illustrative purposes, I offer a short transcribed segment of our January 7 conversation, and what he then wrote about it in his report.

(From Audio 1/7/08 time: 1hr, 16 min, 01 sec):

[Hoffman]: Um, I've got something that [unintelligible] a videotape of naked women.

[Stewart]: No, not a videotape, before I met [my wife] I took snapshots of people skinny dipping down at Taos. I showed them to [my wife] and she said: “Thats- you shouldn't have that.” so I said: “I'll destroy them.” and I tore them up right then and there. I had taken those pictures before I ever met [my wife] when I was single. There was nothing sexual going on, just people swimming in the river.

Yet in Dr. Hoffman's report, which states that he wrote down my answers *verbatim*, he writes:

“At one point in his marriage his wife found a videotape of nude women. Mr. Stewart stated that in the past he has taken a camera to a nudist camp and placed it in a box and videotaped women there without their knowledge. This is voyeurism.”

I might add that I have *never* been to a “nudist camp” of any sort, and I have *never* owned or even operated a video camera.

Argument

CRS 12-10-116 States that CFIs have quasi-judicial immunity as long as they are acting within the scope of their appointment.

Dr. Hoffman's appointment presumed that he was a psychologist. I have demonstrated to the County Court that Dr. Hoffman represented himself to the Court, the GAL, and to myself as a "psychologist". I provided the County Court with an advertising flier in which Dr. Hoffman advertises himself as providing "forensic psychological services for children, adolescents, and adults" and advertises himself as a "Licensed Educational Psychologist." I also provided the Court with a business listing where Dr. Hoffman lists himself under the heading of "Psychologist." Dr. Hoffman's attorney, Mr. Denis Lane, provided the Court with a letter from Magistrate Erler to the Grievance Board of D.O.R.A. advocating for Dr. Hoffman's immunity. In this letter Magistrate Erler refers to Dr. Hoffman as a psychologist. Incidentally, the Grievance Board did not recognize Dr. Hoffman's claim to immunity, and referred the case to the Office of the Attorney General for disciplinary action (letter from Grievance Board is included in the Record.)

However Dr. Hoffman is not, and has never been a psychologist. He was at the time an "Unlicensed Psychotherapist"

CRS 12-43-216 and 12-43-306 both state that an unlicensed psychotherapist may not in any way refer to himself the words "psychologist", "psychology", or "psychological." The only exception to this rule, is that he may call himself a "School Psychologist" if he is actively working under the authority of a school at that time, but certainly, not in private practice.

Dr. Hoffman committed fraud from the very beginning by representing himself as a Psychologist, thus effectively poisoning *everything* that he subsequently did. Common Law, and the Courts have long held that a person may not benefit from or take advantage of his own wrongdoing. as in *Starzel v. Bowers* 292 P .601 (Colo. 1930), Colorado recognizes the "fundamental equitable principle," "which precludes a tortfeasor from taking advantage of his own wrong."

Since I had already entered into a contractual agreement, that was sealed with a payment notated that it was for a psychological evaluation, even *before* he solicited his appointment (In direct violation of Chief Justice Directive 04-08 as a Special Advocate, *and* he fraudulently misrepresented himself as a psychologist, nothing that he did on the case could properly be considered as acting within the scope of his appointment. His very appointment was predicated on the idea that he was a licensed psychologist. CRC 14-10-127 (1) (a) (I) (Subsection 4) States that a Court ordered psychological evaluation my only be done by a “Licensed mental health professional.” **Dr. Hoffman is not, and has never been licensed.**

Many of Dr. Hoffman's activities were outside the scope of his appointment even if it were valid. Here are some of them:

- Forced me to undergo spiritual counseling and therapy against my will. This is expressly forbidden by CJD 04-08
- Gave me peremptory legal advice, telling me that I must drop my custody case. He even claimed that these instructions were being revealed to him by God.
- Forcing me to pray with him, and telling me that I was full of sin. This was extremely distasteful, especially after his going on at length about *his* sexual perversions. (I would remind the Court that he was charging me \$125.00 per hour for this.
- Fabricating evidence and testifying in Court as to the “verbatim” accuracy of this false evidence.
- “Diagnosing” me as a “sociopath” even though I display **none** of the DSM IV diagnostic criteria for Antisocial Personality Disorder.
- Dr. Hoffman never did a psychological evaluation.

The Courts have explicitly ruled that an officer of the Court in a non-judicial or investigatory role does not have immunity if he fabricates evidence.

The Supreme Court has ruled on this matter.

Imbler v. Pachtman, 424 U.S. 409 n.13 (1976), the Court Stated that:

To qualify for absolute immunity then, an action must be “closely associated with the judicial process.” at 495. and also that absolute immunity does not extend to “those aspects of the prosecutor's responsibility that cast him in the *role of an administrator or investigative officer rather than that of advocate.*” *Id.* at 430–31.

In *Kalina v. Fletcher*, 522 U.S. 118 (1997) The Court ruled that a prosecutor that falsely testified as to the accuracy of an affidavit did not have immunity since attesting to the accuracy of the facts in the affidavit, the prosecutor was acting as a complaining witness rather than a lawyer. at 129. The key, according to the Court, was whether the task “involved the exercise of professional judgment,” not merely the review of the “truth or falsity of the factual statements themselves.”*Id.* at 130.

in *Buckley v. Fitzsimmons* (91-7849), 509 U.S. 259 (1993), the Court found that a prosecutor that was operating in an investigative role was not immune to civil when he fabricated evidence.

The *en banc* decision in *Beltran v. Santa Clara County* No. 05-16976 (9th Cir. 2/13/2008) addressed the exact (or nearly so) issue that is at hand in this case. The Court stated (referring to *Buckley v. Fitzsimmons*):

“A prosecutor doesn’t have absolute immunity if he fabricates evidence during a preliminary investigation.”

and went on to say:

“Furthermore, as prosecutors and others investigating criminal matter have no absolute immunity for their investigatory conduct, a fortiori, social workers conducting investigations have no such immunity.”

The Special Advocate is the investigative arm of the Court CJD04-08. If a prosecutor has no immunity if he fabricates evidence, then *a fortiori*, a CFI who is in an investigative role has no such immunity. I did not sue Dr. Hoffman for his opinions, or recommendations, but for the fact that he was completely out of control, acting outside of his (fraudulent from the beginning) appointment *and fabricated evidence that he then presented to the Court and testified as to its veracity.*

Concerning the Statute of Limitations

Mr. Lane's contention that the Statute had run when I filed my complaint is completely specious, First of all, my contract with Dr. Hoffman for him to conduct a psychological evaluation, did not terminate when he solicited his appointment , nor did our professional relationship that was established end when he unethically, and against Chief Justice Directive took on a dual role. I filed my case well within two years from the time that Dr. Hoffman committed the actions that I sued for. I contend that the County Court erred when it summarily dismissed my case without allowing me to present my evidence at hearing. I believe that I have a right to my day in court to prove *all* of my allegations.

Respectfully submitted; August 11, 2008

Kris K. Stewart _____

I certify that on this date of August 11, 2008, I placed a true and correct copy of this APPEAL BRIEF U.S. Mail first class postage paid to: Denis K. Lane 1912 W. Colorado Ave. Colorado Spring, Colorado, 80904
Kris K. Stewart 8/11/08 _____