

PETER C. LOMTEVAS, ESQ., P.C.

Attorney at Law

www.lomtevas.com

101-54 106th Street
Ozone Park, New York 11416

(718) 849-5314
fax: (718) 849-0667

Peter C. Lomtevas, Esq.
Vera A. Lomtevas, Legal Assistant

October 25th, 2008

C. Vincent Phelps
District Court Chief Judge
Division: Division Q
1100 Judicial Center Drive
Brighton CO 80601
Phone: 303-654-3514
Fax: 303-654-3216

Subject: Complaint against Judge Katherine R. Delgado

Your Honor,

Please file and act on this complaint against Judge Katherine R. Delgado ("Delgado") which arises from a late afternoon hearing Friday, October 24th, 2008. This complaint is grounded in administrative/procedural concerns, Delgado's partiality or favoritism and her injudicious courtroom demeanor. I will also point out constitutional violations Delgado committed.

BACKGROUND

An incredibly acrimonious post judgment matrimonial action was ongoing in Larimer County. Somebody contacted the Adams County child protective service and suddenly, the case moved into Adams County. The essential complaint of abuse/neglect consisted of allegations that the mother contacted the child abuse hotline nearly thirty times over the course of a very brief period yielding a dependency proceeding.

The petition by the child protective service ("CPS") was filed March 5th, 2008 and the first assigned judge was Judge Bockman who recently retired.

The mother contacted my office in New York City seeking representation for a case she perceived had nothing more than parental alienation at its roots. However, she

made this notification to my office months before the filing of the dependency petition. As it turned out, I represented another Coloradoan in a divorce action before Judge Philip Roan in Larimer County when my divorce client referred her to me. I had no intention of gathering business in Colorado as I am neither admitted in Colorado nor do I intend to be admitted in Colorado. She called me prior to the divorce trial before Judge Roan and met me during trial.

During the divorce, I had my forensic expert, Dr. Monty Weinstein immediately conduct an informal assessment of the mother and her children on December 14th, 2007. I had Dr. Weinstein travel to Colorado a second time for a detailed parenting assessment of the mother. This occurred February 24th, 2008 and Dr. Weinstein realized that two area psychologists recommended the mother be the custodial parent of the children at issue.

My practice is national in character. I routinely enter cases *pro hac vice* and am admitted in New York and Georgia. I specialize in custodial matters involving false allegations of abuse and neglect offered by local psychologists whom the winners in the case engage. My methodology includes introducing into a case outside custodial experts who challenge and discredit the local psychologists. This is done through motion practice, appearance work and strict adherence to local rules involving expert witness notification and disclosure.

We were prepared when the Adams County CPS notified the mother of their intention to file a dependency proceeding in Adams County. I filed my motion *pro hac vice* March 12th, 2008 and provided my Answer to the petition on March 17th, 2008.

We appeared twice and the mother's dependency proceeding was converted to a contested custodial proceeding after both parents accepted a 5(e) plea. This was done because Dr. Weinstein successfully presented in his observations the serious damage being done to the children and that the mother was likely not the etiology.

Then, we appeared before Delgado.

I filed a second notice of expert witness on September 30th, 2008 for a professional named Karen Wagner who would have opined on how the children were at risk for serious mental health issues arising from the trauma of the contest.

Almost immediately, an unknown individual (later identified as "Laura") at a local mental health organization named "Savio House" interjected herself into the proceedings. This individual asserted that one of the children in the case, while in the custody of the father, alleged that the mother threatened the child and that the child was afraid to go with his mother for visits. This caused the CPS to suspend mother's visits on the very weekend Karen Wagner was to fly out to Adams County and visit with the children.

In the world of forensic assessments, peer review is essential for credible and scientific reports and advice to a court. Ms. Wagner was to serve as a corroborator to the

findings of Dr. Weinstein paying close attention to the behavior of the children. The suspension of all contact without court order on the weekend of her arrival thwarted the mother's ability to build a custodial case. Moreover, this cancellation showed the manipulation that mother was experiencing in Larimer County migrated over to Adams County.

Then, without any pleading or other application writing, CPS and the child's attorney got on to the court's calendar for October 24th, 2008 and set up a hearing before Delgado.

At this hearing, the individual from Savio House, not a lawyer, stood up to the podium and began to testify in the narrative as an unsworn witness. She called herself "Laura" and asserted that one of the boys at issue told her he was afraid of the mother and that he did not want to come home with her.

Then, "Laura" offered testimony as to the mother's "probation" and "random breathalyzer" was completed: meaning that the mother was no longer on probation and no longer had a breathalyzer in her car. There was no foundation laid of any kind to establish the basis for "Laura's" knowledge as to the mother's "probation". In fact, her assertions were not accurate.

Then "Laura" asserted she was a "resident therapist" and as such, she did not believe these children were coached

Again, there was no swearing in, no foundation for qualifications, no voir dire, no cross exam, no report.

Delgado not only allowed this to occur, but Delgado asked "Laura" is there anything she *could offer to help the court make a decision*.

Incidentally, the CPS worker who actually spoke with the mother was not present: she is Amanda Campbell (investigator for the current allegation), 303-412-5077. Her supervisor is Heather Drake.

Then the child's attorney, Elizabeth Martinez, got up and began to testify as an unsworn witness as well. Martinez said, "I do not even know how to put it into legal terms. She is just horrible to us."

Hence, the mother's being "horrible" somehow justifies CPS's action to suspend unsupervised visits and come to court to have it out in front of Delgado? There was even colloquy as to how the mother failed to pay \$37 for the court's parenting coordinator, a Dr. Spiegle, for a meeting the mother requested.

Delgado allowed further attorney unsworn testimony. The custodial father's lawyer asserted the mother made no contact with another court appointed psychologist, Dr. Slover (no paperwork, no portion of her fee paid). Father's lawyer also asserted that

yet another psychologist, a Dr. Speigel, was not paid by the mother until earlier last week, hence a meeting that Speigle could not go forward. Again, the impression is to show the mother is delinquent and that this delinquency has something to do with her parenting. Delgado did not allow the mother to rebut these assertions.

Then, the father's attorney opined that the mother's phone calls give the children great stress as if she was co-counseling the case with Elizabeth Martinez. From this colloquy, Delgado ordered a cessation of all phone contact by the mother to her children.

The mother's local counsel, my sponsoring attorney, was precluded from responding to any of the attorney colloquy. He could not even object to "Laura" adding to the discussions from the seats in the rear of the courtroom. Sponsoring counsel attempted to straighten out the lack of accuracy in the colloquy but Delgado shut him up.

Delgado criticized me through my sponsor that my "motions" make no sense to her. Delgado said, *You need to use Colorado legal terms, not New York legal terms.* Delgado continued that she does *not have time to go to New York law books to figure out* what I am writing. She said, *I am confused, I don't know if anyone else is having these problems* (arms up): *But I just can't make sense of it.* Delgado did not offer a single example of what motion confused her or which terms that concern national CAPTA law were not Coloradoan in timbre.

Delgado did not stop there, Delgado testified from the bench *I have worked with Elizabeth Martinez for several years and I believe her.*

When the mother could no longer tolerate the colloquy she stood up to speak, Delgado held her hand up to the mother and said, *Don't even offer excuses.*

Then, as if to render a ruling, Delgado said, *Maybe the mother needs some anger management classes or some therapy.* Delgado is now a diagnosing psychologist?

DELGADO'S VIOLATIONS

Canon 1

Delgado violated the first Canon of judicial ethics by failing to participate in *establishing, maintaining, and enforcing, and should personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.*

Delgado entertained a hearing with no notice on the issue of suspension of unsupervised visitation between a mother and her two young children. Delgado testified from the bench in support of her trustworthy child's attorney turning Elizabeth Martinez into a "junior judge". Then, Delgado complained of not understanding me because I use New York specific terminology in my "motions" to the Court.

Hence, it is with great doubt one can say that Delgado inspires confidence in her independence and partiality.

Canon 2

Delgado arguably has little experience with expert witnesses or evidence in general. Here, civil procedure was turned upside down by the lack of due process which at times was shocking. "Laura" took up expert witness status without foundation or challenge. Attorneys bantered back and forth with their gripes of the mother and Delgado allowed this. Hence, it is doubtful one can say Delgado promotes public confidence in the integrity and impartiality of the judiciary. (Canon 2.A.)

Delgado admitted her trust in Elizabeth Martinez. Hence, Delgado allows her relationship with Martinez, whatever it is, *to influence the judge's judicial conduct or judgment*. Delgado testified *as a character witness*. Because Martinez is a private practitioner as well as a court appointed child's attorney, Delgado appears to lend *the prestige of her office to advance the private interests of Martinez* as well as allowing Martinez to *convey the impression that they are in a special position to influence Delgado*. (Canon 2.B)

Canon 3

As to adjudicative responsibilities, a kasha of sorts arises.

Delgado appears to not comprehend rules of procedure, rules of substantive law or the rules of evidence.

When she issues her order of supervised visitation in this instance, how will the clerk's office record it? On what motion or pleading? Will this be a transcript order hidden from review and inspection? When litigants appear before her, is Delgado a lie detector? What if Martinez is not certain of her facts or does not know the details? Can a lawyer testify as an unsworn witness and can a person testify as an expert witness without a foundation, voir dire and cross examination? Is it receipt of the badly needed federal CAPTA funding that is Delgado's goal? (Canon 3.A.(1))

There was bedlam in her courtroom as everyone testified to keep the mother and my sponsoring attorney hushed up. (Canon 3.A.(2))

Delgado can't understand my motions because they are in New York-ese? Delgado asked around if anyone else had trouble understanding my "motions" Arguably, many nodded their heads in agreement. So Delgado prejudiced me as well. (Canon 3.A.(3))

Delgado held out her hand indicating that the mother had to remain silent? My sponsoring attorney could not rebut any of the assertions made about the mother because Delgado denied him the opportunity to respond. (Canon 3.A.(4)).

Delgado appeared completely aligned with the child's attorney, CPS and the County Attorney. (Canon 3.A.(9))

Delgado allowed several attorneys to testify as to facts. Canon 3.A.(10).

Delgado failed to require a motion or pleading before conducting a hearing and rendering an order. (Canon 3.B.(1))

Hence, Delgado is teaching her staff that anyone who works for the government can simply walk in and start testifying and obtaining relief. (Canon 3.B.(2))

Hence, her impartiality can reasonably be questioned. (Canon 3.C.(1)) She does not want to hear from the mother and trusts her appointed child's attorney. (Canon 3.C.(1)(a))

Unconstitutional Conduct

The 14th Amendment provides that a state may not arbitrarily take away a person's life, liberty (parenting) or property interest without due process of law. Procedural Due Process requires certain procedural fairness whenever a person acting under color of federal or state law moves to terminate a person's life, liberty or property interest.

Delgado's process the other day took away a mother's right to unfettered access to her children with none of the due process protections available by law.

On the other hand, Substantive Due Process limits the power of the State from regulating or infringing on a citizen's right to make decisions in certain areas of human privacy – such as being a parent to her children. Laws in these areas are subject to strict judicial scrutiny because they interfere with "fundamental rights of privacy." To be upheld, such laws must be necessary to achieve a compelling state interest and the statute must be narrowly drawn.

Again, CPS suspended the mother's access to her children suddenly and in coincidence with a notice of expert witness disclosure and a visit by that expert witness with the subject children. Delgado presided over a kangaroo court where the mother was belittled, insulted and defamed into accepting the government's decision to cause her visits to be supervised by another government agency.

Equal protection provides a basis for challenging federal or state classifications which treat one group of persons as inferior or superior to others. Delgado disfavored my writings in "motions" and put the issue to a vote among indigenous attorneys and their lay persons. As soon as some class of persons is favored or dis-favored by the government, there exists an equal protection issue.

It is respectfully submitted that Delgado was not furthering a legitimate interest by criticizing my "motions". Delgado stated that she did not have the time to look up terms in New York reference materials. I submit that it is her obligation to read and interpret motions presented to her for decision and during motion argument, ask attorneys what they meant by certain terms.


The fundamental interest Delgado is violating is my access to the courts in Colorado. I have a Colorado client, my second, who believes that the government mental health professionals are incompetent and non-caring. She believes they are gerrymandering custody for personal reasons that are not consistent with psychology. Moreover, my client does not believe the judiciary is fair in Colorado. Hence, I entered the case to assist her to present her case and I am having my efforts thwarted by Delgado by her violation of my right to equal protection under the law.

Lastly, I have attached a Georgia state senator's report entitled *The Corrupt Business of Child Protective Services*. It highlights how judges like Delgado with her courtroom misconduct causes suffering among the rank and file population on a national scale. Hence the leadership your judiciary exercises has a direct impact upon the population at large and from the preceding complaint, I respectfully submit that Delgado is not only failing as a leader, but her conduct makes her a menace to society.

Please treat this complaint as seriously as I do.

Thank you.

Respectfully,



PETER C. LOMTEVAS

1 Encl: The Corrupt Business of Child Protective Services from Senator Nancy Shaefer, Georgia State Senator

Cc:

[REDACTED]

Dr. Monty Weinstein