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(on behalf of undersigned petitioners)
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February 13, 2007

Chief Judge Lewis Babcock, U.S. District Court
Alfred A. Arraj United States Courthouse A273 / Courtroom A201
901 19th Street
Denver, Colorado 80294-3589

RE: non-random assignment of Magistrate Mike Watanabe to *pro se* and custody evaluator cases arising from Colorado state courts and appearance of partiality

Dear Chief Judge Babcock:

A situation has been called to our attention, which has caused concern. We have observed that an unusually high number of federal civil cases arising from Colorado state court domestic relations proceedings (particularly those against child-and-family investigators)¹ have been assigned to Magistrate Michael J. Watanabe.

Most recent examples (that we know of) include:

- N^o 03-cv-00743 (against county DHS)
- N^o 04-cv-00054 (against CFI Elode "Dee" Brodbeck)
- N^o 03-cv-02339 (also against Brodbeck)
- N^o 04-cv-00994 (against CFI Bill J. Fyfe)
- N^o 05-cv-01858 (also against Fyfe)

One exception is 06-cv-00089 (another against Brodbeck), though in that case, the magistrate was reassigned without explanation, according to both parties in the appellate briefs (06-1378).

Assignment of judges and magistrates in our U.S. District Court for the District of Colorado is governed by D.C.Colo.LCiv.R. 40.1(A), 8.1 and 8.2. In reviewing these rules, the obvious question that arose was, "What are the random computer-generated numerical odds of all of the aforementioned cases being assigned to this one magistrate?"

¹ The phrase "Child and Family Investigator" recently replaced "special advocate." See generally C.R.S. § 14-10-116.6.

The second question was, “Who is Magistrate Watanabe, and should we be concerned?” After doing a little research, we learned that he used to be a Colorado state court judge in Arapahoe County. While we could reasonably suspect that he might be biased towards the Colorado judiciary and judicial system, that’s not sufficiently probative to complain about. We also learned that he had been the state trial judge in *In re Marriage of Finer*, 920 P.2d 325 (Colo.App. 1996), an oft-cited case that addressed the continuing role of special advocate in post-dissolution matters. Certainly, we could conclude that he’s probably the one magistrate assumed to have the greatest familiarity with domestic relations matters arising out of Colorado state cases.

Regardless of all this speculation, "The policy of underlying neutral assignment is to 'ensure the objectivity and fairness in the assignment of all proceedings.'" (quoting *United States v. Flynt*, 756 F.2d 1352, n.2 (9th Cir. 1984). Random assignment procedures promote fairness and impartiality and reduce the dangers of favoritism and bias. *Louisiana v. Sprint Communications Co.*, 699 F.So.2d 1058, 1063 (5th Cir. 1997).

If we were to be charitable, we might infer that all of these cases in the federal court had been *sub silentio* reassigned to Magistrate Watanabe pursuant to D.C.ColoLCivR. 40.1(B) because of a presumed expertise in Colorado special advocate cases. Alternatively, we might, instead, infer that these cases had been referred to him for quick disposal –especially where *all* of these cases were dismissed at a very early stage and on legal and factual bases that appear questionable.²

However, there’s more to this than the seemingly rank speculation that meets the eye: All of us have been combating an pervasive problem in Colorado that we have termed the “Colorado special advocate racket.” A recent petition to Chief Justice Mullarkey, attached hereto and marked as **Exhibit A**, succinctly describes this situation of a well-shielded collection of attorneys and court-appointed mental health professionals (guardians *ad litem*, parental responsibilities evaluators, special advocates, child and family investigators, parenting coordinators, custody evaluators, *etc.*), who have spent years and tremendous resources in establishing a monopoly on the divorce-industry market in Colorado and in heavily leveraging the state courts’ dependence on them (especially with the state court budget cutbacks of 2002 and the ever-increasing docket load).

² We’re not going to use this complaint memorandum as a means to collaterally attack allegedly erroneous recommendations or legal reasoning. We recognize that the appropriate avenue for that is the appeal process.

This simple truth is, no one wants to be involved in domestic relations cases. The state courts, from whence Magistrate Watanabe came, are delighted to delegate fact-finding (and, in some cases, decision making) to these experts. See Galatzer-Levy & Kraus, *The Scientific Basis of Child Custody Decisions* (John Wiley & Sons, Inc. 1999 at p. 4) (“[T]he position of the court’s supporting services is so significant, that mental health professionals’ opinions are almost always adopted by the courts”). The divorce courts levy the exorbitant costs (*e.g.*, \$6,500 for a “parental evaluation”) upon the parties of the litigation, who have no choice in the matter. In this way, the courts move the dockets along (which is a key factor in judicial performance reviews); the court-appointed experts control the flow of information to assure their importance (and, thus, become quite wealthy); the divorce attorneys manage the acrimony to increase billable hours (Grotman & Thomas, 1990). The families foot the bill.

Those of us, who have sued special advocates in federal court, didn’t file a class-action RICO suit (though that’s under consideration) and we didn’t make the alleged “special advocate racket” the focus of our claims. Instead, we sought redress for specific malfeasances or non-feasances on the part of the defendant. At least one of us, however, hinted at the existence of a fraternity between special advocates and judges in Colorado, as found in Case N^o 05-cv-01858, docket 32 at p.2; docket # 69 at ¶ 10 & n. 3.

At the heart of the "special advocate racket" is three lobbying organizations in Colorado: The [Colorado State Interdisciplinary Committee](#) (CIDC), a self-described lobbying group. Their [Board of Governors](#) consists of state judges and special advocates and attorneys. Another is the Family Law Section of the CBA. The third and most influential is the [Metropolitan Denver Interdisciplinary Committee](#) (MDIC). Any denial that these groups is a lobbying group is disingenuous.³ These groups “wine and dine” the State judiciary with monthly and annual

³ See, *e.g.*, the Colorado Bar Assoc. Family Law Section Executive Council Minutes from February 13, 2004 states, “Beth Henson mentioned that special advocates, child legal representatives, and mental health professionals are being sued for working in special advocate cases. She mentioned more than a few people who have been subjected to lawsuits. The MDIC and others are working on legislation and other ideas to try to relieve this situation. It was suggested that an immunity statute would help. The Executive Council advised Beth that, if we could help in some way, we would be glad to lend support.” Ms. Henson is a member of the Executive Council of the Family Law Section, a past-president of the MDIC (and has been on the Board of Directors of the MDIC since 1998) and has been a contributing author to several Colorado domestic relations laws and has testified in front of Colorado Senate and

conventions held at lavish hotel-resorts in Keystone, Breckenridge, Vail and downtown Denver. They purport to gather to discuss ways to improve services for high conflict divorce families but, in reality and according to some persons, who have covertly attended, they actually focus on ways and means to increase revenue generation, augment collections and enhance their immunities.

On 12/5/06, the MDIC held their Annual Round Table Luncheon with Local Judges and Magistrates.⁴ Before that, on 11/07/06, the seminar topic was, "Hot Water! Getting out and Staying Out: Managing and Preventing Board Complaints and Malpractice Claims." Before that, the seminar topic was, "Federal Jurisdiction of Domestic Relations Issues." **The featured speaker for this latter event was your magistrate, former Colorado state judge, "Mike Watanabe."**

Why is this important? For one thing, one of the above-mentioned defendants, Bill J. Fyfe, is a past-secretary and current board member of the MDIC. In order for Watanabe to be an invited and esteemed speaker, we assume that he may be a past or present member, as well. Irrespective of that, while it might not have given rise to an appearance of partiality for Magistrate Watanabe to speak at a similar group/committee in New Mexico, Utah, Wyoming or Oklahoma, his participation in a private special interest group of special advocates raises the appearance of partiality, where he seems to be the preferred magistrate being assigned most of the Colorado special advocate cases, all of which have been recommended by him for dismissal at the pleading stage. This would be no different than if a federal judge or magistrate was giving talks to the National Rifle Association and, at the same time, was being assigned all or most of the lawsuits against gun manufacturers in that district.

Also, of particular concern to us is that one litigant has submitted the following statements in her February 12, 2007 affidavit⁵ regarding U.S. Magistrate Judge Mike Watanabe:

He then proceeded to pressure both of us to drop our civil rights suit against the defendants, stating, "Pro se litigants NEVER win in this court." . . . Magistrate

House of Representatives Committees in 2000, 2001, 2002, and 2005 regarding proposed domestic relations laws.

⁴ *Nota bene* that parents don't have this opportunity to meet with judges to share their concerns and group issues.

⁵ A copy of the February 12, 2007 Affidavit is attached hereto and marked as, "**Exhibit B.**"

Judge Watanabe stated that he had been a judge in Arapahoe County and had presided over D&N cases. . . He further advised us that he had personally trained Julie Marshall . . . He assured us that Judge Marshall would never do such a thing as I had [alleged in my Complaint]. It was clear he was predisposed toward the defendants in that case. I was shocked at this overt bias.


Id. at ¶¶ 22- 26.

Our perception is that the Colorado "special advocate racket" described, hereinabove, extends all the way up to the federal court --not just in the state courts, the state Psychologists Examiners Board and so on. Perception --the "appearance standard"-- is a legally sufficient basis for the relief herein requested.

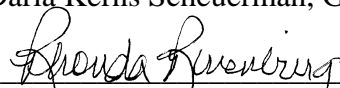
We respectfully submit the following requests, light of this information:

- (1) that a copy of the materials used in the MDIC presentation by Magistrate Watanabe be made available to us, especially whereas it is likely that the magistrate prepared these materials on a U.S. government computer, and/or prepared these materials while on U.S. government "time" or property; and whereas the basis for his expertise as a speaker was to represent or speak on behalf of the federal court in the District of Colorado regarding this particular area of law;
- (2) That an account and candid disclosure be made available to us by way of reply to our request of how and why Magistrate Judge Watanabe has been non-randomly assigned to the above-mentioned cases and any other cases arising from Colorado domestic relations matters;
- (3) That, in light of the apparent non-random assignment of the aforementioned cases and in light of the magistrate's participation in the private consortium of the defendant special advocates, that Magistrate Judge Watanabe be disqualified from further assignments of cases consisting of Colorado domestic relations matters.

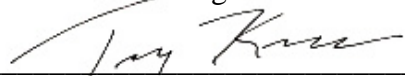
Respectfully submitted this 13th day of February, 2007



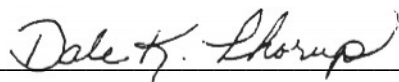
Darla Kerns Scheuerman, GRI, PPM



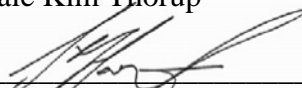
Rhonda Rivenburg



Troy Kramer



Dale Kim Thorup



Sean Harrington