IN THE

INDIANA SUPREME COURT

Cause No. 15S01-1405-CR309

DANIEL P. BREWINGTON Appellant (Defendant Below)	))	Appeal from the Dearborn Superior Court 2
	)	Cause No. 15D02-1103-FD-84
v.	)	
STATE OF INDIANA Appellee	))	Judge Hon. Brian Hill

VERIFIED MOTION FOR JUDICIAL DISQUALIFICATION OF THE HONORABLE JUSTICE LORETTA RUSH

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Daniel P. Brewington, Appellant pro se, respectfully moves for the recusal of Justice Loretta H. Rush from this matter to redress an appearance of impropriety and to protect and preserve public confidence in Indiana's highest court.

I. BACKGROUND

Brewington's motion for rehearing involves a case which places the most watchful eye of the public on the judiciary as it deals with the safety of judicial officers and other professionals operating within the court system as well as a person's right to free speech and the ability to harshly criticize those officials. Brewington was convicted of Intimidation of a Judge, James D. Humphrey ("Humphrey"); Intimidation of Dr. Edward J. ("Connor"); Intimidation of Heidi Humphrey ("Heidi"); Attempted Obstruction of Justice of Brewington's divorce; and Perjury.

On January 17, 2013, the Indiana Court of Appeals overturned Brewington's convictions of Intimidation of Connor and Intimidation of Heidi, but upheld the other convictions. *Brewington v. State*, 981 N.E.2d 585 (Ind.App. 2013). On May 1, 2014, this Court granted transfer and issued an opinion authored by Justice Rush. *Brewington v. State*, 15S01-1405-CR-309. Upon review of the opinion authored by Justice Rush, there was concern about the errors in material facts. Brewington researched the author of the opinion and found Justice Rush had been a victim of a home invasion November 18, 1998, where her husband was nearly murdered. The man responsible for the crime was a former ward of the state, John Jesse Swaynie, for whom Justice Rush served as his guardian ad litem during juvenile proceedings in the 1980s.

Brewington's case has been plagued with constitutional problems, changes of judges, numerous attorneys, etc., due to the fact that one of alleged victims of the non-violent "crimes of speech" is an active judge. Brewington's case is further complicated by the fact he is known as a person who openly criticizes public officials on the internet as he has developed websites and a

blog designed to criticize court officials. What may set this case and Motion for Disqualification apart from others is it requests Justice Rush to disqualify herself from a case in which she already authored an opinion. Brewington is requesting a rehearing, due to the confusing and adversarial nature of Justice Rush's opinion.

II. LEGAL STANDARD REQUIRING RECUSAL

"Appellate courts routinely deal with broad issues and set precedents that significantly affect many lives. The high stakes in these cases inevitably create heightened ethical responsibility." Randall T. Shepard, The Special Professional Challenges of Appellate Judging, 35 Ind. L. Rev. 381, 384 (2002). Indeed, the stakes here are very high – this case concerns the most fundamental right passed down from the framers of the Constitution of the United States; our First Amendment right to free speech.

A. The Indiana Code of Judicial Conduct sets out clear standards requiring recusal.

"A judge shall comply with the law,* including the Code of Judicial Conduct" and "shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety." Ind. Judicial Conduct Rule 1.1, 1.2. "A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*" Jud. Cond. R. 2. "A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.*" Id. (emphasis added). As discussed infra, recusal is proper here.

Under the Code of Judicial Conduct ("CJC"), "A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment." Jud. Cond. R. 2.4(B). Furthermore, "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned . . ." Jud. Cond.

R. 2.11(A) (emphasis added). The CJC is clear there "is no question that a judge is required to disqualify him or herself in any proceeding in which the judge's impartiality might reasonably be questioned. The Canon demands it." In re Wilkins, 780 N.E.2d 842, 845 (Ind. 2003) (emphasis added). See also Bell v. State, 655 N.E.2d 129, 132 (Ind. Ct. App. 1995) ("judge must disqualify himself where his impartiality might reasonably be questioned")(citing Tyson v. State, 622 N.E.2d 457, 460 (Ind. 1993)); Mahrdt v. State, 629 N.E.2d 244, 248 (Ind. Ct. App. 1994).

B. The circumstances requiring recusal include, but are not limited to, whether a reasonable person might doubt the impartiality of the judge or whether the judge has extrajudicial knowledge of the matter before him or her.

The enumerated circumstances under which a judge shall recuse include, but are not limited to: (1) whether the "judge has a personal bias or prejudice concerning a party or a party's lawyer" or (2) whether the judge "has personal knowledge of facts that are in dispute in the proceeding." Jud. Cond. R. 2.11(A)(1). The circumstances under which a judge shall recuse also include whether the judge, "(a) served as a lawyer in the matter in controversy . . ." [or] "(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding. . ." Jud. Cond. R. 2.11(A)(6).

Those enumerated circumstances are not exhaustive, or even necessary, for recusal. The Comments to Rule 2.11 expressly state that "a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply." Jud. Cond. R. 2.11 cmt. 1 (emphasis added). Furthermore, the standards for recusal do not require actual bias or proof of bias – "the mere appearance of bias and partiality may require recusal if an objective person, knowledgeable of all the circumstances, would have a rational basis for doubting the judge's impartiality."

Bloomington Magazine, Inc. v. Kiang, 961 N.E.2d 61, 64 (Ind. Ct. App. 2012)(citing Patterson v. State, 926 N.E.2d 90, 94 (Ind.Ct.App.2010)).

C. The test is objective and the circumstances requiring recusal are to be viewed through the lens of someone outside the judiciary.

In the context of recusal, a "reasonable person" has been described as "the proverbial average person on the street with knowledge of all the facts and circumstances alleged in the motion to recuse...." In re Wilkins, 780 N.E.2d at 848 (citing In re Martin–Trigona, 573 F.Supp. 1237, 1243 (D.Conn.1983)). As Justice Rucker noted, "disqualification of a judge is mandated whenever a significant minority of the lay community could reasonably question the court's impartiality." Id. (citing Pennsylvania v. Druce, 796 A.2d 321, 327 (Pa.Super.Ct.2002), appeal granted in part, 809 A.2d 243 (Pa.2002)).

The test is based on the "possibility" that someone "particularly outside of the legal community" would question the judge's impartiality. In re Wilkins, 780 N.E.2d at 848 (citing United States v. Jordan, 49 F.3d 152, 157 (5th Cir.1995) (noting that the average person on the street as "an observer of our judicial system is less likely to credit judges' impartiality than the judiciary")); In re Mason, 916 F.2d 384, 386 (7th Cir.1990) (observing that a lay observer would be less inclined to credit a judge's impartiality than other members of the judiciary).

D. There are important public policy goals for recusal.

Justice Shepard noted, "Substantial concerns about fairness arise when a judge who arguably should disqualify remains as a voting participant" and "a judge who sits on a case notwithstanding legitimate grounds for recusal can damage public confidence in his impartiality for years to come." Tyson, 622 N.E.2d at 460 (citations omitted). Thus, "Indiana practice has always leaned toward recusal where reasonable questions about impartiality exist." Id. Subsequently, Justice Shepard noted that, "[A] court which acts outside its own rules does so at

peril to public confidence." Id. at 461. Moreover, that peril extends to cases even when the rules do not directly address the specific facts. "[A]s professionals, [judges] must promote judicial integrity out of respect for the institutions [they] inhabit, even when [the] written codes of conduct do not speak directly to all of the situations [they] encounter." See Randall T. Shepard, The Special Professional Challenges of Appellate Judging, 35 Ind. L. Rev. 381, 385 (2002).

Granted, "a judge [should] not use disqualification to avoid cases that present difficult, controversial, or unpopular issues." Jud. Cond. R. 2. However, this provision is a protection against a judge shirking his or her duty because the case is one that the judge would rather avoid or for which he or she would rather not associate. Purposefully avoiding difficult cases would reflect poorly on the courts. However, that is not the case here.

Both the Code of Judicial Conduct and established precedent require recusal or disqualification of Justice Rush in any proceeding in which a normal person could reasonably question her impartiality and where he has been involved with the subject matter and/or has personal or "extrajudicial knowledge" of facts that are in dispute in the proceeding.

III. ARGUMENT

A. A normal person could reasonably question Justice Rush's ability to be impartial in light of her being a victim of a violent home invasion by someone she had a connection to through the juvenile court system.

1. *A former ward of the state, John Swaynie, for whom Justice Rush served as a GAL, broke into her home and attempted to murder her husband.*

"In the early morning hours of November 18, 1998, Swaynie broke into the home of Loretta Rush ("Mrs. Rush"), who had served as Swaynie's guardian-ad-litem in the 1980s when he was a minor. Swaynie v. State, 762 N.E.2d 112, 113 (Ind. 2002). When her husband Jim Rush ("Mr. Rush") came downstairs to investigate, Swaynie attacked him, pinning him on the floor and choking him, while yelling up to Mrs. Rush, "I'm killing your husband." Id. When Mrs. Rush

could not get the telephone to work to call the police, she jumped out a window, breaking her shoulder in the process, in order to get help from a neighbor. Id. The neighbor ran to the Rush home and discovered Swaynie choking Mr. Rush. Id. He was able to pry Swaynie's hands away and pin him down while Mr. Rush called the police. Id. The police arrived and arrested Swaynie." Swaynie v. Superintendent, 3:08-CV-122

Justice Rush has dealt with many cases before her dealing with violent situations despite her horrendous encounter with John Swaynie. The case of Brewington v. State of Indiana raises concerns about Justice Rush's ability to remain impartial as the case deals with activity that may walk a fine line between our most precious constitutional right, freedom of speech, and protecting those who administer justice in the courtrooms. The case, though not similar from a violent perspective, deals with a judge's fear of someone he crossed paths with in a court setting. The judge, James D. Humphrey, had been appointed Special Judge in Appellant Brewington's divorce. Brewington, unhappy with the Humphrey's rulings, harshly criticized Humphrey over a long period of time on the internet. Though there had never been any evidence Brewington would cause any physical harm, Humphrey expressed fears, whether rational or not, of having to defend himself from physical attacks from Brewington. This case dangerously intertwines harsh criticisms and what the State considers "veiled threats," which require an objective mind. Humphrey and other alleged victim, Dr. Edward J. Connor claim Brewington's conduct crossed the boundaries of free speech and the First Amendment because Brewington posted too much already public information on the internet and/or posted false opinions about the men. This caused them to feel fear in their homes, though it was not entirely certain whether they actually feared Brewington or feared Brewington's criticisms may somehow incite others. As Humphrey had a gun repaired to protect himself and his family from any potential home invasion, a

reasonable person would see at least the appearance of impropriety in Justice Rush presiding over the case. As the element of fear of potential violence by a court official in their own home is a component in determining what constitutes a veiled or hidden threat, Justice Rush's ability to remain objective may be questioned.

B. A normal person could reasonably question Justice Rush's ability to be impartial in light of her professional, if not personal, relationship with one of the victims in Brewington's case, Judge James D. Humphrey as well as Judge Carl H. Taul, a judge who is a subject in the case.

1. *Justice Rush served on the Juvenile Justice Improvement Committee with "victim" James Humphrey and Carl Taul at least between the years of 2008-2013. Justice Rush and Humphrey graduated together in 1983 from the Indiana University School of Law-Bloomington.*

Not only does the subject matter of the case give the appearance of potential impropriety, but also the fact Justice Rush has a working professional relationship with Judge Carl H. Taul and the alleged victim, Judge James D. Humphrey as they served on the Juvenile Justice Committee for at least five or six years. Justice Rush and Judge Taul still remain on the committee. (The website of the Indiana Supreme Court Juvenile Justice Improvement Committee can be found here http://www.in.gov/judiciary/center/2382.htm). "Appearance" of impropriety took on new meaning in Rush's opinion. In Brewington v. State, Rush wrote:

> "Moreover, he accused the Doctor and Carl Taul, the original trial judge, of improper *ex parte* communications with each other, until Judge Taul eventually recused and appointed Judge Humphrey as special judge. See Ex. 120 (Order Naming Special Judge). Brewington considered his campaign a success as to Judge Taul, referring to the recusal frequently in subsequent blog posts. Exs. 160, 162, 167, 171, 191, 194. But even though those actions had led the Doctor to the professional opinion that Brewington was "potentially dangerous," Tr. 131–32; Ex. 132 at 7, he remained in the case."

Rush attacked Brewington for accusing Taul and Connor of participating in ex parte communication. Rush slammed Brewington for writing about being successful in causing the recusal of Taul. Then Rush wrote how this conduct led Connor to the opinion that Brewington

was "potentially dangerous," which the Supreme Court considered as circumstantial evidence toward Brewington's "intent" in order to determine if hidden threats existed. Rush failed to mention Connor was the first person who raised the issue of Connor and Taul's ex parte communication. In a letter dated February 25, 2008, Connor informed Brewington's then attorney and the attorney of Brewington's wife that Taul had been in contact with him. Connor wrote, "With this letter please be advised that Hon. Judge Carl Taul contacted me on 2/22/08 to convey his agreement for the review of the above-captioned case." This letter appears in State's Exhibit 67 as well as a letter authored by Brewington explaining its significance [pg. 1-19 of State's Exhibit 67 attached hereto.] Humphrey is also well aware of the document as it appears in some of the many documents Brewington filed in Humphrey's court during Brewington's divorce. One might question whether Rush reviewed Exhibit 67 except Rush *referred* **[emphasis added]** to State's Exhibit 67 on three different occasions throughout the opinion. Rather than acknowledge Brewington was correct in stating there was ex parte communication between Connor and Rush's fellow Juvenile Justice Committee member Taul, Rush attacked Brewington. This adds another tier of objective questionability to the appropriateness of Justice Rush's participation in Brewington v. State.

C. A normal person could reasonably question Justice Rush's impartiality in reviewing Rush's opinion regarding Brewington's perjury conviction and how Rush has already caused tremendous harm to Brewington's constitutional rights as well as the rights of other people falling under the jurisdiction of the Indiana Court system.

The best way to demonstrate the reasoning for Justice Rush's disqualification and request for rehearing is to address Justice Rush's handling of Brewington's perjury conviction. Brewington first maintains the following error calls into question Rush's participation in *any* capacity as a judicial officer; especially as a member of the highest court in the State of Indiana. Brewington participated in his own grand jury investigation on February 28, 2011. During the

course of his testimony, Brewington was asked if whether he knew Heidi Humphrey was married to James Humphrey when Brewington encouraged people to contact Heidi Humphrey with any questions or concerns about the state of the family court system as Heidi Humphrey was listed as the Dearborn County Advisor to the Indiana Supreme Court Ethics and Professionalism Committee. Brewington stated, "it very well could be a possibility. I'm not from Dearborn County. I don't know but the thing is..." when he was abruptly cut off by Dearborn County Prosecutor F. Aaron Negangard. Though Negangard was responsible for the incomplete statement, Negangard obtained an indictment for perjury from the grand jury and Brewington was convicted of perjury for lying about not being 100% sure James and Heidi Humphrey were married. On May 1, 2014 the Supreme Court affirmed the perjury conviction.

Brewington is obviously troubled as to how someone can be found guilty of perjury saying he does not know for sure, less an admission from the speaker stating otherwise. This could be compared to convicting someone for claiming the glass is half-empty when it is actually half-full, but this is not the reasoning behind the argument for recusal. Brewington is most concerned with the fact Rush writes Brewington was convicted of committing two different acts of perjury. In addressing Brewington's perjury conviction, which the Court summarily affirmed when accepting transfer, Justice Rush spoke of the trial jury "convicting Brewington of perjury for feigning ignorance in his grand-jury testimony of whether Heidi Humphrey was the Judge's wife, and that her address was his address." Though "feigning ignorance" doesn't seem to meet the beyond a reasonable doubt requirement, it is the ruling of the Court. Serious questions are raised when Justice Rush wrote another account of the perjury conviction. "And the jury's perjury verdict implicitly recognized that intent, finding that Brewington lied to the grand jury about his true motives for posting the Judge's address." Brewington was only convicted of one

perjury charge yet Justice Rush claimed there were two. Not only did she claim there were two different findings of perjury by the jury, she fused motive with a black and white finding of fact to help rationalize affirming another conviction of Brewington's. There is no need to determine why or how Justice Rush came up with a separate yet adversarial perjury conviction. Judges are human and make mistakes but this is not just a misstatement of fact. Even if someone else had written the statement incorrectly, it should raise the eyebrows of any competent traffic court judge. Short of making two opposing statements regarding intent, it is impossible to affirmatively prove someone could be lying. Even then, intent is subjective and facts are not. Something that is also not subject to interpretation is the fact no jury found Brewington to be guilty of lying "about his true motives for posting the Judge's address." Rush not only altered the nature of the perjury conviction but she crafted the sentence in a way to harm Brewington's case to demonstrate some form of intent. The absence of intent not only means Brewington is not guilty of a crime, the absence of intent means there is no crime. Justice Rush was actively working as an advocate for the prosecution of Brewington in trying to build a stronger case against Brewington. The fact Rush felt she needed to add weight to the evidence against Brewington only further demonstrates Brewington's innocence. Regardless of whether Rush's actions resulted from her loyalty to Humphrey and Taul or the inability to separate herself from the emotional trauma associated with the attempted murder of her husband in 1998, any reasonable person could conclude Justice Loretta Rush's participation as a judge in any capacity should be questioned. Rush knew Brewington did not lie about Taul and Connor engaging in ex parte communication yet Rush took a Lance Armstrong-ish approach and tried to bully the finder of fact rather than acknowledge her colleagues acted in an unethical manner. One might try to offer Rush the benefit of the doubt except Rush's opinion also stated that Brewington

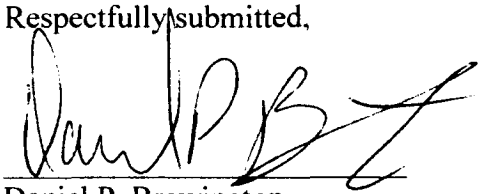
demonstrated violence directly to both of his victims when Dearborn County Sheriff testified there were no findings of violence against any public official during the entire investigation. It is implausible to think that someone could have a history of demonstrating violence toward a judge and not be subjected to federal investigations and/charges. Any reasonable mind would see the appearance of impropriety existed, but any legal mind could see Rush's actions were a malicious attempt to bring harm to Brewington in affirming his conviction while intentionally polluting the appellate record, thus harming Brewington's ability to petition to the Supreme Court of the United States and by discouraging any potential Amici from assisting Brewington.

IV CONCLUSION

Joel Schumm, professor at Indiana University's Robert H. McKinney School of Law, wrote the following about Rush on the Indiana Law Blog, "She has wowed the legal community and beyond with her thoughtfully crafted and impactful opinions.) (http://indianalawblog.com/archives/2013/11/ind_courts_a_re_3.html.) There is no doubt that Rush "thoughtfully crafted" the opinion in Brewington; Rush just failed to craft the opinion in a manner consistent with the integrity standards set forth by the rules of judicial conduct. Justice Loretta H Rush's findings in Brewington v. State have already caused great harm to Brewington's constitutional rights as well as the rights of other people falling under the jurisdiction of the Indiana Court system. Free speech and the ability to criticize judicial officers are at the heart of Brewington's case. For this and the above reasons Justice Rush should cease any further participation a case with such broad constitutional ramifications. Continuing to sit on this case notwithstanding legitimate grounds for recusal will damage public confidence in her impartiality for years to come. *See Tyson v. State*, 622 N.E.2d 457, 460.

WHEREFORE, Daniel P. Brewington respectfully moves Justice Rush be recused or disqualified from this proceeding and for all other relief just and proper.

Respectfully submitted,



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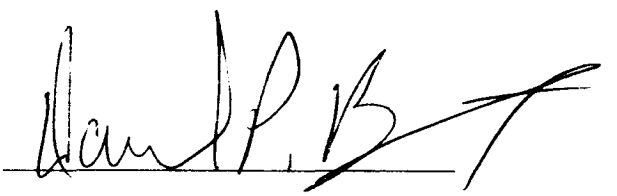
VERIFICATION

I, Daniel Brewington, verify under penalties of perjury that the foregoing statements and representations are true to the best of my knowledge and ability.



WORD COUNT CERTIFICATE

The undersigned counsel verifies that the foregoing Motion (excluding cover page, table of contents, table of authorities, signature block, word count certificate, and certificate of service) contains no more than the 4,200 words permitted by Ind. Appellate Rule 34(G)(2).

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon the following by way of First Class United States mail, postage prepaid, this 4th day of June, 2014.

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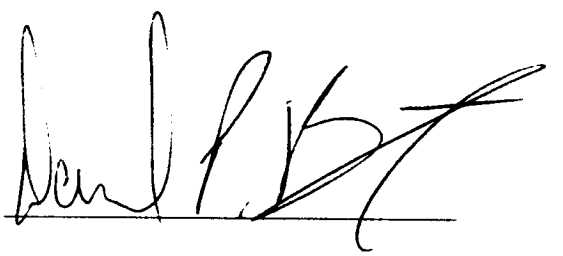

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Thomas Grills
Ripley County Sheriff

Richard Hertel
Ripley County Prosecutor

Aaron Negangard
Dearborn County Prosecutor

David W. Lusby
Dearborn County Sheriff

May 2, 2009

Re: Criminal complaint regarding Dr. Edward J. Connor Psy D engaging in the practice of psychology in the counties of Ripley and Dearborn without being licensed by the State of Indiana and how it may have legal consequences for the Sheriffs' Departments and the Prosecutors' offices of both of the respective counties.

To whom it may concern:

I am the Respondent in a divorce proceeding in the Ripley Circuit Court which involves a child custody evaluation that was completed by Dr. Edward J. Connor Psy D; of Connor and Associates, PLLC, 34 Erlanger Rd, Erlanger, Kentucky 41018. Dr. Connor conducted a child custody evaluation for my wife and me in the summer of 2007 and filed his evaluation report with Judge Carl H. Taul August, 29, 2007. Dr. Connor was not licensed by the State of Indiana to practice psychology until July 8, 2008. I am bringing this and other issues to the attention of your respective offices to give you the opportunity take appropriate action against Dr. Connor.

I am forwarding some of the documents that Dr. Edward J. Connor Psy D submitted to Judge Carl H. Taul, Ripley Circuit Court Judge during the period of time Judge Taul was serving as the judge in this matter. Dr. Connor was neither a party to the divorce proceedings nor a Court appointed expert yet Dr. Connor contacted Judge Taul directly on a number of occasions outside the presence of the parties. Dr. Connor began to personally attack me for trying to obtain a copy of the evaluation case file in his letters that he sent to Judge Taul and discriminated against me because I am a pro se litigant.

I have been representing myself in this case for roughly 14 months and I feel I have a working knowledge of the law. I understand that my complaints and concerns about Dr. Connor,

licensed to practice psychology by the State of Indiana, are civil issues and not matters usually addressed with your respective offices; but the problem is much deeper than what it appears.

In a letter to Judge Taul, dated February 21, 2008 (attached hereto), Dr. Connor indicated that his child custody evaluation contained "numerous errors and oversights." I requested a copy of Dr. Connor's evaluation case file, which Dr. Connor's contract stated I was entitled to, and Dr. Connor began to provide several conflicting reasons as to why I wasn't entitled to the evaluation case file. In an effort to sidestep any hearsay argument, I will only refer to Dr. Connor's documents that he wrote to Judge Taul or copied to Judge Taul, that are part of the Court record. Dr. Connor's letter progression is as followed:

1. February 21, 2008 letter to Judge Taul (attached hereto):

   > "Mr. Brewington's documents indicate that there are numerous errors and oversights in our report."

2. March 26, 2008 letter to Judge Taul (attached hereto):

   > "Pursuant to the above captioned case, we received a fax on 3/25/08, although the letter was dated 3/04/08, from Mr. Daniel Brewington. In his letter he states 'I filed an appearance as pro se,' to represent himself in this matter. First I need to know if this is accurate as he is requesting a copy of the case file to be mailed to his home address, or that he be permitted to pick it up at our office. Again, I need to know if Mr. Brewington has, in fact, filed a "pro se" motion consistent with Indiana Statute, and if he is therefore permitted to have a copy of the entire case file. He is requesting that this be provided to him at his appointment on 3/31/08." [Judge Taul's 3/26/08 response to Dr. Connor (attached hereto) stated "Re yours of March 26, 2008, Mr. Brewington has indeed filed an appearance naming himself as his own attorney, at least for the moment. Please see copies of the attached pleadings. This Court has only ordered that Mr. Brewington have a copy of your evaluation, at this point. I hope this answers your questions." [Dr. Connor did not copy the parties to his letter to Judge Taul.]

3. March 27, 2008 letter to Mr. Brewington (attached hereto); cc Judge Taul and opposing counsel:

   > "Our correspondence with Judge Taul indicates that you have a right to the 'evaluation' at this time. As such, we do not interpret this as you having a right to the entire file, but simply the 'evaluation' report."

4. April 1, 2008 to Judge Taul (attached hereto):

   > "Based on your letter dated 3/26/08 stating that Mr. Brewington is entitled

Further, it concerns me regarding Mr. Brewington's intentions regarding this case file considering that it holds not only his confidential information, but also (the mother's)."

5. April 16, 2008 addendum to the custody evaluation:

> "Mr. Brewington is correct in stating that our contract indicates we would provide the file to the representing attorney; however, given the circumstances, we believe that a Court order is necessary to release the file to Mr. Brewington, given that he is representing himself pro se."

6. August 4, 2008 letter to Mr. Brewington (attached hereto); cc Judge Taul and opposing counsel:

> "Without (the mother's) consent or a court order from Judge Taul, I am prohibited from releasing the confidential information contained within the file per state and HIPAA laws and regulations."

7. September 9, 2008 letter to Mr. Brewington (attached hereto); cc Judge Taul and opposing counsel:

> "With regard to (Mr. Brewington's) statement that I have not provided a 'valid' reason as to why I cannot release the case file to (Mr. Brewington), I would reiterate that there are laws and ethics that protect a client's mental health records."
>
> Dr. Connor also wrote:
>
> "With regard to the Office Policy Statement, we do not have a signed Office Policy statement for you on file. It appears you were not provided with this document when you initially came to our office, which was an oversight on the part of the office staff. Nevertheless, the Office Policy Statement is simply an adjunct document to the Court order in which you and (the mother) agreed to participate fully in a custody evaluation to be conducted at this office."

8. September 10, 2008 letter to Judge Taul (attached hereto):

> Dear Judge Taul,
>
> With this letter, I am expressing my concerns regarding Mr. Daniel Brewington's blatant disregard for the Court's rulings in the above-captioned case. As recently as 9/8/08, Mr. Brewington continues to send letters to me requesting that I release the case file to him, including (the mother's) raw test data, despite the Court's rulings that he be provided

which is concerning. His statement in his letter dated 9/5/08 that "the game is over Dr. Connor" appears rather threatening and implies that I and/or the Court do not take this matter seriously, which is certainly not the case. His repeated remarks in letters and motions filed with the Court implying that I have engaged in some form of unethical or criminal behavior are patently false and disturbing. I have patiently and repeatedly responded to Mr. Brewington's concerns to this point; however, it is clear that he disregards any information that does not serve his agenda. It is very perplexing that he is unable to understand or accept the basic premise of confidentiality that protects (the mother's) records from being released without her consent or without a Court order. I have repeatedly explained this to him in our correspondence, but he continues to claim I have not given him a valid reason for withholding the file. I would respectfully ask that you review the attached sampling of Mr. Brewington's recent writings so that you may discern for yourself whether you agree with my interpretation that they are redundant, provocative and disregarding of the Court's orders.

As a custody evaluator per an Agreed Order and thereby an extension of the Court, I feel Mr. Brewington's behavior shows a blatant disrespect for the Court. His numerous requests for the file despite your rulings and his repeated statements that he is an attorney suggest a degree of deceitfulness or reality distortion. His voluminous letters and baseless allegations are intrusive to the point of being harassing and slanderous. Reading and responding to his letters has required a considerable amount of my professional time. I have been willing to take the time thus far, but I am now convinced that it is futile to continue in a back and forth dialogue with Mr. Brewington. As such, I am requesting that the Court provide me with some protection in that I will not further communicate with him outside of a formal deposition or Court testimony unless ordered to do so by the Court. I have offered Mr. Brewington dates for a deposition per his request provided he pay the appropriate fees for my preparation and time in advance. I have further been subpoenaed by (opposing counsel) to testify regarding the custody matter and will appear in Court at the hearing on 12/19/08.

In closing, I had hoped to avoid bringing this matter to the Court's attention but at this point, Mr. Brewington has made it a necessity. Please feel free to contact me if you have any questions or require any additional information or clarification.

Judge Taul's September 16, 2008 response to Dr. Connor's September 10, 2008 letter is as followed:

Dear Dr. Connor:

This will acknowledge receipt of yours of September 10, 2008.

As I am sure you are aware a judge must remain impartial in the many matters brought before him or her. I must therefore respectfully disagree with your contention that as a custody evaluator you are "an extension of the Court." I am therefore, unable to provide you with "protection." You are free to communicate or not, as you choose, with Mr. Brewington.

I would refer you to your own legal counsel for any steps you feel necessary against Mr. Brewington.

Sincerely,

Carl H. Taul
Ripley Circuit Court

I believe you probably see some discrepancies in the policies, orders, laws, and regulations Dr. Connor claims prevent him from releasing the evaluation case file to me. On March 27, 2008, Dr. Connor claimed that Judge Taul ruled that I wasn't entitled to the case file. It would have been unethical and/or illegal for Judge Taul to rule on the release of the case file. Judge Taul would not have been able to rule on the release of the case file without a motion from one of the parties. Since Dr. Connor was not a party to this action, Dr. Connor could not have filed any pleadings regarding the release of the case file. Dr. Connor failed to provide any evidence as to why he shouldn't honor his contract and Indiana and Kentucky law and release the case file to me. On April 1, 2008, Dr. Connor suddenly became "concerned" as to why I wanted the case file. On April 16, 2008, Dr. Connor arbitrarily decided to discriminate against me because I was not a lawyer. On August 4, 2008, Dr. Connor began to claim that there were HIPAA laws and regulations that prohibited him from releasing the file to me. On September 9, 2008, Dr. Connor claimed that his office didn't have me sign the office policy statement but claimed that it didn't matter because it was simply an "adjunct document" to a court order. On September 10, 2008, Dr. Connor attacked me in a letter to Judge Taul claiming that I couldn't understand the laws regarding confidentiality; just one day after Dr. Connor stated that he failed to provide me an office policy statement explaining matters of confidentiality.

There is no protective order prohibiting Dr. Connor from releasing the evaluation case file. By law, I am entitled to my client record from a health care professional. Kentucky Revised Statute (KRS) 403.300 and IC 31-17-2-12 state that the evaluator's report may be received as evidence if the evaluator provides counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator, and the names and addresses of all the persons who the investigator has consulted. The only reasons Dr. Connor can withhold a health record is if there is a protective order or a medical reason from a medical doctor stating that the release of the record would cause the client to harm himself and/or someone else. Dr. Connor has failed to provide either of

The discrepancies do not end with Dr. Connor as Judge Taul has given a number of conflicting/false statements while refusing to order the release of Dr. Connor's case file. During the June 13, 2008 hearing on the Respondent's motion to Release Dr. Connor's evaluation case file Judge Taul stated (as read from the June 13, 2008 hearing transcripts):

> "The Court's Order, as I recall, directed Doctor Connor to release that which was... he is from Kentucky and the Court is not familiar with Kentucky law, nobody is here, I assume (opposing counsel) is not here representing to be familiar with the laws of the State of Indiana." (Opposing counsel replied "I am licensed in Kentucky but I don't practice there a whole lot") Judge Taul continued with "But I am not and the Order to the Doctor to release was to release that which he was obligated to do under Kentucky law."

There is no such order in the Court record. Judge Taul later stated:

> "The doctor has not asked the Court for anything other than permission or an Order from the Court to release information..."

Dr. Connor was not appointed by the Court and did not need permission from the Court to release the evaluation case file as both parties signed an agreement waiving their rights to confidentiality. Judge Taul then stated:

> "Okay and as I explained to you earlier Mr. Brewington...I am not familiar with what obligations the Doctor has under Kentucky law." "And I am not going to undertake to uh do that."

Judge Taul filed the orders from the June 13, 2008 hearing on July 21, 2008. It took Judge Taul nearly forty (40) days to issue the orders from the June 13, 2008 hearing. In that time Dr. Connor obtained a license to practice psychology in the State of Indiana (July 8, 2008 attached hereto). The July 21, 2008 orders stated:

> "The Court does not believe it appropriate to order the divulsion of a physician or therapist's entire file."

Judge Taul had stated that he was not aware of Kentucky law. Judge Taul couldn't have known if it was "appropriate to order the divulsion of a physician or therapist's entire file" in the State of Kentucky. During the November 24, 2008 hearing Judge Taul stated:

> "I think the motion to Compel Doctor Connor to Honor His Contract and Release the Child Custody Evaluation Case File can be addressed without further hearing. Doctor Connor is not a party to these proceedings. And I have previously ordered that you are not entitled to that case file."

The next conversation between the Judge and me went as follows"

Mr. Brewington: Even though Doctor Connor said I was...
By the Court: It is denied.
Mr. Brewington: ...entitled to the case file?
By the Court: That is between you and Doctor Connor.
Mr. Brewington: This problem with that is Dr. Connor is no longer speaking to me. Uh, as of...
By the Court: Little wonder Mr. Brewington, little wonder.

Judge Taul later stated:

> "I ruled that you are not entitled to them Mr. Brewington. Back in this last summer I ruled that way."

There is no record demonstrating that Judge Taul ruled that I was not entitled to the case file. It would have been illegal to rule that only I was not entitled to the case file without a valid medical reason. After Judge Taul stated that he had previously ordered that I was not entitled to the file, Judge Taul suggested that the release of the case file was between Dr. Connor and me. I filed a Motion for a Change of Judge citing *Garrard v. Stone*, 624 N.E.2d 68, 69-70 (Ind. Ct. App. 1993); a judge who received and considered such evidence must recuse if a party files a change of judge motion under Indiana Trial Rule 79. On December 5, 2008, Judge Taul recused himself from the proceeding.

The situation regarding the current Judge, Judge James Humphrey, is equally concerning. Canon 2 of the Code of Judicial Conduct from the Indiana Rules of Court states:

- "A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All the Judge's Activities."
- "Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is dishonorable or harmful, although not specifically mentioned in the Code."
- "The test for the appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired."
- "A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge."

The events concerning Judge Humphrey are as followed:

- December 5, 2008, Judge Taul recused himself and filed the Court's Order Naming Panel of Judges.
- December 15, 2008, the Respondent filed his Motion in Limine requesting that the Court preclude any evidence from Dr. Connor's evaluation due to the ex parte communication between Dr. Connor and the Court; and due to the fact that the Court and Dr. Connor obstructed the Respondent's access to evaluation case file/Respondent's client record.
- December 17, 2008, the Court appointed James D. Humphrey as Special Judge.
- January 6, 2009, the Petitioner filed the Motion to Set Hearing on Final Hearing.
- January 7, 2009, Judge Humphrey ruled on the Petitioner's motion and set the final hearing for May 27, 2009, at 9:00 a.m. for eight hours.
- January 9, 2009, the CCS Entry for the final hearing was filed with the Ripley County Court.
- January 13, 2009, the Petitioner filed the Response to Respondent's Motion in Limine and Motion to Dismiss.
- February 24, 2009, Judge Humphrey set a hearing for the pending motions regarding the Respondent's Motion in Limine for April 29, 2009.

---The Respondent had called Judge Taul's office on a few different occasions before Judge Humphrey set the matter for hearing to determine if there had been a problem regarding the Court's long delay in ruling on the matter. Judge Humphrey's office claimed that they didn't receive the Motion in Limine or the Response to Respondent's Motion in Limine and Motion to Dismiss. The Ripley County Clerk's Office claimed that the Motions had been forwarded to Judge Humphrey. The motions regarding the Motion in Limine, filed December 15, 2008 and January 13, 2009, respectively, were apparently "lost" in transit; however, the Petitioner's Motion to Set Hearing on Final Hearing, filed January 6, 2009, apparently "found" its way to Judge Humphrey's office and was promptly ruled upon.---

- March 11, 2009, Betsy Isenberg, Deputy Attorney General of the State of Indiana, filed a Motion to Quash Subpoena on behalf of Judge Carl H. Taul, claiming that the Respondent failed to tender Judge Taul the fees for one [1] day's attendance and the mileage allowed by law as in accordance with Indiana Trial Rule 45(G) and "any action that Judge Taul may have taken as a Judge can and should be gleaned from the orders and records of the case. *See O'Malia v. State*, 207 Ind. 308, 192 N.E. 435,436 (1934) (a court speaks only by its record and court orders)."
- March 17, 2009, the Respondent filed his Reply Memorandum in Support of Motion in Limine which refers the Court to IC 31-17-2-12, concerning the admissibility of an investigator's report of custodial arrangements for a child and how Dr. Connor may have been unaware of Indiana law because Dr. Connor was not licensed by the State of Indiana to practice psychology. The Respondent's motion reads as follows:

> "IC 31-17-2-12 states that the investigator's report may be received as evidence; and may not be excluded on the grounds that the report is

available to counsel and to any party not represented by counsel: (1) The investigator's file of underlying data and reports; (2) Complete texts of diagnostic reports made to the investigator under subsection (b); (3) The names and addresses of all persons whom the investigator has consulted."

- March 18, 2009, Judge Humphrey issued the Court's Order Directing Response to Quash Subpoena or for Protective Order; directing the Respondent to respond to Judge Taul's motion. The order reads:

> "That Defendant, Daniel Brewington, shall explain the purpose of issuing the subpoena for Judge Carl H. Taul. After reviewing this response and Motion of Judge Taul filed by the Indiana Attorney General's Office the Court shall determine whether to grant said motion, deny said motion or schedule a hearing."

- March 19, 2009, the Respondent filed his Response to Judge Taul's motion stating:

> "The Indiana Rules of Court; Code of Judicial Conduct states in Canon 4H(1) '*Compensation and Reimbursement.* A judge may receive compensation and reimbursement of expenses for extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of impropriety'."
>
> The Respondent's response also states:
>
> "The Respondent's subpoena is not an attempt to circumvent the Indiana Rules of Trial Procedure. The Respondent believes that if Dr. Connor is allowed to testify to his accounts, recollections, and interpretations of the ex-parte communications between Dr. Connor and Judge Taul, without having the ability to call Judge Taul to testify to the accuracy of Dr. Connor's statements, it would compromise the Respondent's rights to Due Process which could negatively impact the children of the parties."

- March 26, 2009, the Court filed its Order Quashing Subpoena to Judge Taul and Granting Protective Order; relieving Judge Taul of the obligation to comply with the Respondent's subpoena, stating "for good cause shown."
- April 9, 2009, the Respondent filed his Motion to Reconsider Quashing Subpoena citing:

> "IC 35-44-1-1 states Bribery Sec. 1. (a) A person who: (1) confers, offers, or agrees to confer on a public servant, either before or after the public servant becomes appointed, elected, or qualified, any property except property the public servant is authorized by law to accept, with intent to control the performance of an act related to the employment or function of the public servant or because of any official act performed or to be

The Respondent's motion also directed the Court's attention to:

> "*People v. Montgomery*, Ill. Supr., 642 N.E.2d 1260, 1262 (1994) (reversing decision to prohibit cross-examination of judge because the issue of whether the judge made an inappropriate promise to defend in an inappropriate *ex parte* communication went to the heart of the controversy); *Thomas v. Walker*, 860 S.W. 2d at 582 ("Absent a threshold showing of improper conduct, 'an inquiry into his mental processes in arriving at his decision would be improper and would threaten the foundation of an honorable and independent judiciary.'") Thus, the circumstances under which judicial testimony about case-related matters would be permitted in court proceedings would be extremely limited'."

- April 16, 2009, the Court filed its order on the Respondent's Motion to Reconsider stating "...said Motion should be and hereby is DENIED."
- April 16, 2009, the Petitioner filed Motion for Temporary Restraining Order requesting the Court to issue an "order to restrain Daniel Brewington during the pendency of this proceeding from divulging any more information concerning the parties' dissolution proceedings in any public forum, to include publication on the internet and to remove the information that he has already posted."
- April 16, 2009, the Respondent filed his Motion for Mistrial citing fraud on the part of the Petitioner, Judge Carl H. Taul and Dr. Edward J. Connor Psy D, of Connor and Associates. Excerpts from said motion are as follows:

> "The fraudulent actions of the above parties have damaged the integrity of the hearing to the point that no measures can properly rectify the situation."

> "After signing the Agreed Order to submit to a custody evaluation with Dr. Connor, the Petitioner signed an agreement to undergo individual psychotherapy with Dr. Connor while he was conducting a child custody evaluation for the Petitioner and the Respondent. The Petitioner submitted Dr. Connor's agreement for individual psychological services to the Court during the June 13, 2008 hearing (Petitioner's Exhibit B) as an argument as to why the Respondent should not be entitled to Dr. Connor's case file from the evaluation."

> "Dr. Connor contacted Judge Taul by a letter dated February 21, 2008. In his letter, Dr. Connor informed the Court that there were 'numerous errors and oversights' in the evaluation and requested approval from the Court to conduct additional sessions to correct the errors. In a letter to the parties, dated February 25, 2008, Dr. Connor stated 'With this letter please be advised that Judge Taul contacted me on 2/22/08 to convey his agreement

and not the Court, it would be a violation of the Indiana Judicial Canon; however there is no way to determine the content of the ex-parte communications because Judge Taul did not contact the parties to make the parties aware of the ex-parte communication."

"In Judge Taul's September 16, 2008 letter to Dr. Connor, Judge Taul stated 'You (Dr. Connor) are free to communicate or not, as you choose, with Mr. Brewington. I would refer you to your own legal counsel for any steps you feel necessary against Mr. Brewington.' Judge Taul's letter was in response to Dr. Connor's September 10, 2008 letter where Dr. Connor informed Judge Taul that he had been subpoenaed to testify by the Petitioner. Judge Taul was aware that Dr. Connor was a witness for the Petitioner when Judge Taul gave legal advice to Dr. Connor about taking legal measures against the Respondent."

"Dr. Connor claimed to be an extension of an Indiana Court, while not being licensed to practice psychology in the State of Indiana, which is a violation of IC 25-33-1-14(c); Unlicensed practice prohibited. 'It is unlawful for any individual, regardless of title, to render, or offer to render, psychological services to individuals, organizations, or to the public, unless the individual holds a valid license issued under this article'."

"In addition to providing the Court with a plethora of ex parte evidence; Dr. Connor provided opposing counsel copies of the Respondent's correspondence to Dr. Connor. If Dr. Connor is considered a 'health care provider' by legal standards, Dr. Connor has violated laws governing doctor/patient confidentiality. If the laws governing doctor/patient confidentiality don't apply to Dr. Connor, Dr. Connor has failed to serve as an 'impartial expert' while conducting a custody evaluation."

"The Respondent feels that there are no measures that can be taken to rectify the situation as the Respondent has no way of finding out how much evidence Dr. Connor has given the opposing party and the Respondent has no way of knowing how much ex parte evidence exists in the Court's file. The Respondent believes that any discussion regarding the unethical and/or illegal conduct of Dr. Connor and Judge Taul will only serve to further complicate the matters relating to the divorce; which would have the potential to improperly influence the Court."

- April 21, 2009, the Court filed its CCS Entry (ordered on April 17, 2009) setting the Hearing on the Petitioner's Motion for Temporary Restraining Order for April 29, 2009.
- April 23, 2009, the Court filed its Order Denying Respondent's Motion for Mistrial.

I have not yet obtained the transcripts from the April 29, 2009 hearing held in Judge Humphrey's courtroom at approximately 2:30 p.m. so any representation of statements from others may not be exact quotes. When Judge Humphrey sat down and addressed the parties, Judge Humphrey stated that we were there to hear the Petitioners Motion for Temporary Restraining Order. After a brief silence, opposing counsel stated "...and the Respondent's Motion in Limine?" to which Judge Humphrey replied "I thought I already ruled on that." Judge Humphrey seemed a little distraught and made another reference to his belief that he already ruled on the Respondent's Motion in Limine. Judge Humphrey continued to hear the Petitioner's motion first without giving the parties a definitive answer as to whether he was going to address the Motion in Limine, which was filed four (4) months prior to the Petitioner's motion and dealt with the unethical and/or illegal conduct of Dr. Edward J. Connor and Judge Carl H. Taul. During the hearing of the Petitioner's motion, Judge Humphrey interrupted the Respondent on numerous occasions, questioning the relevancy of the Respondent's arguments, evidence, and cross examination of the Petitioner. At one point, during the cross examination of the Petitioner, Judge Humphrey declared that he had to take a break and left the chambers without explanation. Judge Humphrey scrutinized the Respondent's arguments while allowing the Petitioner and opposing counsel to spend time in testimony and cross examination speculating and debating that the parties' 3 and 5 year old children would be able to surf the internet and be able to read advanced reading material in less than 4 to 5 years. Judge Humphrey also allowed opposing counsel to question the Respondent about using the "Jedi mind trick" on people when neither the Respondent's mental stability nor the Star Wars sagas by George Lucas were topics of debate. The definition of the "Jedi mind trick" is as follows:

> The Jedi mind trick is a skill of the Jedi Knight that gives them the ability to read or control the minds of others. ie: When Luke Skywalker and Obi-wan Kenobi were stopped at a check point by Storm Troopers who were looking for C3PO and R2D2, Obi-wan Kenobi told the Storm Troopers "these are not the droids you are looking for" to which the Storm Troopers responded "these are not the droids we are looking for" when C3PO and R2D2 were actually sitting next to Obi-wan Kenobi in Luke Skywalker's Land Speeder. Hence the Jedi mind trick.

Judge Humphrey heard discussions on arguments such as fictional, supernatural mind powers that were raised by the Petitioner and opposing counsel while I presented him with the case of Gregory II v. Manning which cited *Swank v. Smart*, 898 F.2d 1247 (7th Cir. 1990), *reh'g denied*; stating the Court held that:

> The free-speech claim is quickly dispatched. The conversation between Swank and Tina on the motorcycle was speech in the literal sense, but not speech protected by the free-speech clause of the First Amendment (made applicable to the states and their subdivisions via the Fourteenth Amendment by *Gitlow v. New York*, 268 U.S. 652, 666, 45 S.Ct. 625, 629, 69 L.Ed. 1138 (1925)). It was also association in the literal sense, but not association "for the advancement of beliefs and ideas." *NAACP v.*

> right of association is to protect the market in ideas, *Abrams v. United States*, 250 U.S. 616, 630, 40 S.Ct. 17, 22, 63 L.Ed. 1173 (1919) (Holmes, J., dissenting), broadly understood as the public expression of ideas, narrative, concepts, imagery, opinions--scientific, political, or aesthetic--to an audience whom the speaker seeks to inform, edify or entertain. Casual chit-chat between two persons or otherwise confined to a small social group is unrelated, or largely so, to that marketplace, and is not protected. Such conversation is important to its participants but not to the advancement of knowledge, the transformation of taste, political change, cultural expression, and the other objectives, values, and consequences of the speech that is protected by the First Amendment.

As a majority of my web content deals with the unethical and/or illegal conduct of Dr. Connor; Judge Humphrey should have recused himself because the information on my website and blog has a significant impact on Judge Humphrey as Dr. Connor is often appointed by Judge Humphrey to conduct child custody evaluations for divorces in Dearborn County. The fact that Dr. Connor was illegally serving as a psychologist for an Indiana courtroom, because Dr. Connor was not licensed to practice psychology in the State of Indiana, already puts Judge Humphrey and the County of Dearborn at risk for civil litigation/damages; especially as a majority of Dr. Connor's false and conflicting statements are in the Court record. This combined with the fact that Judge Humphrey was aware that Judge Taul recused himself due to his unethical/illegal communications with Dr. Connor suggests that Judge Humphrey has a substantial interest in the matters regarding, not only my web content, but the outcome of this case as any inference by Judge Humphrey that Dr. Connor may have committed any unethical and/or criminal acts may lead to a litigation nightmare for Judge Humphrey and the County of Dearborn as any criminal and/or civil case Dr. Connor had been or is involved with could be subject to scrutiny.

Judge Humphrey heard arguments on the Petitioner's Motion for a Temporary Restraining Order for over one hour and fifteen minutes. At or around 4:05 p.m., Judge Humphrey began to hear the arguments on the Respondent's Motion in Limine. Judge Humphrey continued to interrupt the Respondent while failing to do the same for opposing counsel. At one point Judge Humphrey allowed opposing counsel to read and provide commentary on all of the motions filed by the Respondent which had nothing to do with the Respondent's Motion in Limine. Judge Humphrey overruled the Respondent's objections to each motion read by opposing counsel without giving the Respondent the opportunity to explain the objection. During the hearing on the Motion in Limine, the Court transcripts will reflect that Judge Humphrey commented on more than one occasion that the hearing had to be done by 4:30 p.m. and rushed the parties to do so. The Respondent's right to a fair hearing was denied due to the fact that Judge Humphrey wasn't planning on hearing the Motion in Limine because he thought that he had already ruled on it. Then Judge Humphrey went on to say that the proceeding had been going on too long and he didn't see any reason why he would continue the final hearing. To make matters worse, before the Court adjourned, opposing counsel asked Judge Humphrey for an approximate time frame that she could tell Dr. Connor to appear to testify at the May 27, 2009 hearing. While serving as a Special Judge because Judge Taul recused himself due to his ex parte communication with Dr. Connor; and while knowing that Dr. Connor wasn't licensed in Indiana

many of which are in the court record; Judge Humphrey told opposing counsel "have Dr. Connor call my office."

I requested a copy of Dr. Connor's case file on March 6, 2008. Dr. Connor began to make up stories as to why I wasn't entitled to the case file. Judge Taul began to make up stories why he wasn't going to order the release of the file, referred to fictional Court orders, and claimed that he made statements that he never made. Judge Humphrey showed up for a hearing with the impression that he had already ruled on my Motion in Limine. Judge Humphrey kept questioning my reasoning without objection from opposing counsel, stopped me in the middle of questioning the Petitioner, without objection from opposing counsel, claiming that he wasn't going to listen to bickering, and then stated that he wasn't going to continue the May 27, 2009 final hearing because the divorce proceedings had been going on too long; knowing that I didn't have a copy of Dr. Connor's case file or a valid reason why I wasn't entitled to it.

This is a very serious situation that has the potential to have very severe ramifications for the Counties of Ripley and Dearborn and many of the public officials of the respective counties. I have been contacted by several people who have shared similar experiences with Dr. Connor. I filed a complaint with the Kentucky Board of Examiners of Psychology (Dr. Connor was not licensed in Indiana at the time of the evaluation) and the Board stated that there were no apparent violations of law in the complaint. The problem that the Board had was that no one had ever requested a copy of the psychologist's response to a complaint. After informing the Board and Assistant Attorney General Mark Brengelman that KRS 61.884 stated that I was entitled to a public record bearing my name, I was provided with a copy of Dr. Connor's response to my complaint. The second complaint that I filed with the Board dealt with the false information Dr. Connor provided in his response to the first complaint. The Attorney General's office has been in contact with me on the matter.

I am probably going to file a lawsuit against Dr. Edward J. Connor before the final hearing. Dr. Connor did an evaluation for the defense of Marco Chapman, who was executed on November 21, 2008 by the State of Kentucky. Dr. Connor stated that he had a hard time understanding me because I had severe ADHD yet somehow he was capable of understanding someone on death row who suffered from a plethora of severe psychological disorders. It seemed the State of Kentucky was a little slow to take action against Dr. Connor. I found the Motion for Leave to File Petition for Writ and Request for Emergency Relief, filed by Jack Conway, Kentucky Attorney General, on October 29, 2008 (attached hereto). Mr. Conway made the argument that he had the right to file said motion on behalf of the Commonwealth even though the Commonwealth was not "a 'real party in interest' under the specific rules regarding original actions in appellate courts, CR76.36(8)." Then the Commonwealth, by Attorney General Jack Conway, "argued that the issue of Chapman's competency to discharge his counsel had been finally settled by this Court in Chapman v. Commonwealth, ___S.W.3d___ (Ky. 2008)." The issue isn't whether Marco Chapman was, or was not, competent to fire his counsel and choose the death penalty; the issue is that Dr. Connor played a role in determining if the State of Kentucky could execute Marco Chapman. "Experience hath shewn, that even under the best forms those entrusted with power have, in time, and by slow operations, perverted it into tyranny." Thomas Jefferson

Dr. Connor said that he wasn't going to give me his evaluation case file because I didn't have an attorney. Judge Taul and Judge Humphrey were aware of Dr. Connor's discriminatory practices yet they seemed to try to sprint to the "finish line" for some reason. I have been asked to testify in trials regarding Dr. Connor and I have offered my assistance to any parent who has participated in one of his evaluations. This isn't necessarily an issue where Dr. Connor didn't pick the correct parent; it's an issue of whether he used a scientific approach in forming his opinion or if he just guessed. Dr. Connor made numerous claims during the evaluation in my case that I couldn't communicate and that he found my writings confusing and difficult to follow. I guess he guessed wrong.

Unfortunately I am perceived as a "bad guy" because I won't roll over and accept that Dr. Connor stated "We believe that minimizing the amount of time Dan has with the children will in fact sustain their existing bond." I'm a radical because I won't accept that Dr. Connor's contract states that I am entitled to the evaluation case file; Indiana and Kentucky laws concerning health records state that I am entitled to the case file; Indiana and Kentucky law states that Dr. Connor's evaluation is hearsay unless the case file is presented to all parties; while Judge Taul and Judge Humphrey have failed to provide a protective order or a valid legal reason as to why Dr. Connor can effectively "lie" about why he can't release the case file to me.

I expect that someone should be getting in contact with me regarding the situation. I am well aware of the legal avenues and disciplinary venues that are available to handle this situation but I am tiring of all the formality in trying to hold public officials accountable for unethical and or illegal conduct that is harmful to the very public they are sworn to protect. I am posting a copy of this letter on my blog www.danbrewington.blogspot.com to let people know about the potential dangers of going through a child custody evaluation with Dr. Connor in a Ripley and/or Dearborn County Court. If you receive any order to enforce action by Special Judge Humphrey and/or the Ripley County Court, please be sure you feel comfortable that there has been no willful unethical and/or illegal conduct in any part of what I have brought to your attention in this letter. If Judge Humphrey files a restraining order forcing me to take down my internet content, please be advised that I have no intentions of doing that. Please be advised that anyone involved in trying to arrest me or prosecute me for attempting to keep the public safe from Dr. Edward J. Connor will be held personally accountable for contributing to the unlawful practices mentioned above. If incarceration is eminent, please be advised that I intend to leave the web postings up and I would direct the Court to send any restraining orders to Facebook, Myspace, Twitter, and Google as I would welcome the legal help from these internet giants in protecting my rights to free speech.

I would hope that you understand that I have a responsibility to protect the rights of my children. Some of the rights include the right to grow up spending equal time with both parents; the right to cross-examine Dr. Connor's case file; and the right for their father to have the ability to present his views and circumstances to a public audience in an attempt to protect the children's rights that the family court system is taking away. I fail to see how I am a bad guy for putting everything on the line for my children in a very organized, civil, and legal manner. I guess it would be easier for me to accept "that's just the way it is" or "you can't beat the system" and just give up. Things would have been a lot easier if Rosa Parks would have just moved to

the back of the bus; but she didn't because she knew she should have the same rights as everyone. So should I.

I am enclosing this letter with my Motion for Mistrial that I am filing with the Court. I am forwarding this letter to the Versailles Republican, the ACLU, as well as state and nationally elected officials. I am sending copies of this letter to the Indiana Attorney General, the Kentucky Attorney General and the Kentucky Board of Examiners of Psychology who are already in the process of looking into why Dr. Connor willfully provided false information to the Board and why a few members of the complaints screening committee "failed to find" the false information in Dr. Connor's response to my complaint the first time around. If the Sheriff's Department and/or the Prosecutor's office feels that it isn't their job to protect families from criminal conduct in the Ripley Circuit Court, at least the public will know when your respective offices came to know about this situation. I would be concerned about trying any more cases in the Ripley County Court knowing that Judge Taul conducted himself in an illegal manner and knowing that this letter has been made available to the public in several different mediums. Thomas Jefferson once said "Timid men prefer the calm of despotism to the tempestuous sea of liberty." I have assumed many risks in representing myself and challenging Dr. Edward J. Connor. People told me that I couldn't go after "the judge's guy" because the judge would get mad and may retaliate against me. Fear of retaliation or injustice is not a valid rationale for giving up on your children. Intimidation and fear expelled by those who play a role in protecting the public only serve to motivate people like me to learn, investigate, and assemble others in an attempt to inform and protect the public. An angry mob doesn't come close to having the power of a well informed public who are horrified by the drastic measures a loving father has to go to in an effort to protect his children's rights to grow up spending equal time with both parents in a divorce.

I hope to hear from you soon.

Daniel Brewington

cc: (including but not limited to)

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Steve Hoersting, M.Ed.
Sharon Davis, L.P.C.C.

February 21, 2008

Hon. Judge Carl H. Taul
Ripley Circuit Court
Courthouse Square, 115 N. Main
P.O. Box 177
Versailles, IN 47042-0177

RE: Brewington vs. Brewington
Cause No.: 69C01-0701-DR-007

Dear Judge Taul,

On 2/19/08, Mr. Dan Brewington dropped off a packet of information to myself and Dr. Sara Jones-Connor regarding the custody evaluation in the above-captioned case. Mr. Brewington's documents indicate that there are numerous errors and oversights in our report. In the spirit of accuracy and fairness, I intend to offer both Mr. Brewington and Mrs. Brewington an additional appointment and render an addendum to the initial report after doing so, provided you are in agreement with this matter. Unfortunately, I do not have an available appointment until Monday, March 31 at 8 a.m. for Mr. Brewington. Mrs. Brewington's appointment would be at 11:30 a.m. on the same date. I will reduce my fee significantly for each party if you are in agreement that I be permitted to update my evaluation.

Please feel free to contact me with any questions or concerns.

Respectfully,
Ed Connor Psy D

Ed Connor, Psy.D.
Licensed Psychologist
KY License #1007

CC: [redacted] Attorney for Petitioner

Thomas Blondell, Esq., Attorney for Respondent
208 Walnut Street
Lawrenceburg, IN 47025

Connor and Associates, PLLC
General Psychological Services

Forensic Assessment, Consultation & Treatment

Edward J. Connor, Psy.D.
Sara Jones-Connor, Ph.D.
Jean A. Deters, Psy.D.
Ellen Yass-Reed, M.A.
Steve Hoersting, M.Ed.
Sharon Davis, L.P.C.C.

February 25, 2008

[redacted]., Attorney for Petitioner
[redacted]5

Thomas Blondell, Esq., Attorney for Respondent
208 Walnut Street
Lawrenceburg, IN 47025

RE: Brewington vs. Brewington
Cause No.: 69C01-0701-DR-007

Dear Counselors,

With this letter please be advised that Hon. Judge Carl Taul contacted me on 2/22/08 to convey his agreement for the review of the above-captioned case. Therefore, the previously suggested appointment times will be reserved for Mr. and Mrs. Brewington on March 31, 2008. As stated in my letter dated 2/21/08, I will reduce my rates to $80 an hour (usually $150). As such, $350 from each party will cover their appointments (two hours each) as well as chart review, dictation and the production of an addendum to the 2007 custody evaluation. This fee will be due at the time of each party's appointment.

If you have any questions, please feel free to contact me at any time. Please notify your clients of the information contained in this letter.

Sincerely,

Ed Connor, Psy.D.
Licensed Psychologist
KY License #1007

EC/egb

LETTER TO VARIOUS PEOPLE FROM D. BREWINGTON

STATE'S EXHIBIT #67