STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

ELIZABETH BOYER, individually, and by and for her minor son, JEREMY BOWEN; et al.

Plaintiffs,

v.

JEREMIAH S. JEREMIAH, et al.

Defendants.

C.A. No.: 2010-1858

PLAINTIFFS' OBJECTION TO CERTAIN DEFENDANTS' MOTION TO REVOKE PRO HAC VICE ADMISSIONS

Plaintiffs object to the Motion of Defendants Jeremiah, Asquith, Hastings, Newman, Paulhus and Wright ("the Defendant Judges") to revoke the pro hac vice ("PHV") admissions of plaintiffs' counsel Robin Dahlberg, Yelena Konanova and Deborah Archer. In that motion the Defendant Judges wrongfully allege that Dahlberg and Konanova violated the Rules of Professional Conduct by publicly discussing the lawsuit's legal claims on two separate occasions almost four months ago; that Konanova, a Harvard Law School graduate, is not qualified to serve as a member of plaintiffs' litigation team because she just recently became a member of the New York state bar; and that plaintiffs do not need the assistance of Dahlberg, Konanova, and Archer at this point because the Court has yet to rule on plaintiffs' motion for class certification.

The Defendant Judges' motion should be denied. First, counsel's comments do not constitute an ethical violation. Rhode Island's Rule of Professional Conduct 3.6 was designed to prevent lawyers from making inflammatory statements that might prejudice a jury. No one has requested a jury in this case and defendants have failed to make any showing of prejudice.

Second, revoking the PHV admissions of Dahlberg, Konanova, and Archer would violate their right to freedom of speech guaranteed by the First Amendment of the United States Constitution and by Article 1, Section 21 of the Rhode Island Constitution. Plaintiffs' counsel have a right to speak out publicly about the legal and factual allegations of the complaint—a document that is readily available to any member of the public. Moreover, the Defendant Judges have vigorously exercised their free speech rights since the filing of this suit. Defendant Jeremiah, in particular, has been frequently quoted in the press alleging the virtues of the Truancy Court program.

Third, the Defendant Judges' motion ignores controlling precedent and otherwise lacks a legal basis. Notably, the Defendant Judges do not cite to a single decision that supports their motion. Their motion contains at least one significant misstatement of fact respecting plaintiffs' counsel's comments. The Defendant Judges also make a completely baseless accusation against Konanova respecting her PHV motion.

Finally, Dahlberg, Konanova, and Archer are highly qualified to represent plaintiffs in civil rights litigation regardless of whether this case is certified as a class action. The Defendant Judges' motion amounts to nothing more than a heavy-handed attempt to stifle the kind of criticism of governmental activities inherent in our democratic system and should be denied.

Factual and Procedural Background

1. On March 29, 2010, plaintiffs filed a civil rights class action suit seeking declaratory and injunctive relief against the Defendant Judges and fourteen other defendants, including six of the thirty-three municipalities that participate in the Truancy Court program. The complaint did not request a jury trial nor did it seek damages. To date, some three months later, no party has requested a jury trial.

2. Plaintiffs' original complaint is 71 pages long. Approximately 200 of its 317 paragraphs contain detailed, specific factual allegations respecting constitutional and statutory violations in the practices and procedures of Truancy Court and their effects on plaintiffs. Plaintiffs amended that complaint as a matter of right on May 12, 2010 to clarify their claims against the municipal defendants.
3. In conjunction with their complaint, plaintiffs filed a motion for certification of a class of plaintiffs, a motion for preliminary injunction, a motion to assign the case to a single justice and motions for the admission PHV of Dahlberg, Konanova, and Archer (among other motions). (Konanova's PHV motion is attached as Exhibit 1). Plaintiffs supported their allegations and motions with detailed, specific affidavits including a transcript of a hearing before Chief Judge Jeremiah.
4. All these pleadings were served on defendants the same day they were filed.
5. Among other points, plaintiffs' affidavits state:
    a. Defendants served truancy petitions on at least one student with only 2 absences (see, e.g., Affidavit of Elizabeth Boyer, sworn to on Mar. 22, 2010, ¶ 6);
    b. Defendants served some summonses without waywardness petitions and vice-versa (or sometimes, neither) and otherwise did not provide adequate notice of the charges (see, e.g., Affidavit of Debbie B., sworn to on Mar. 21, 2010, ¶ 4; Affidavit of Malcolm S., sworn to on Mar. 24, 2010, ¶¶ 4, 15; Affidavit of Alice F., sworn to on Mar. 25, 2010, ¶¶ 3,4);
    c. Defendants failed to explain plaintiffs' rights to them (see, e.g., Boyer Affidavit, supra, ¶ 13; Alice F. Affidavit, supra, ¶¶ 10,12,13);

d. Defendants told the plaintiff parents that their children could be taken away from them and sent to the Training School (see, e.g., Boyer Affidavit, supra, ¶12; Malcolm S. Affidavit, supra, ¶18);

e. Plaintiffs were kept in Truancy Court long after they had resumed attending school regularly for reasons unrelated to "truancy", i.e., attendance (see, e.g., Malcolm S. Affidavit, supra, ¶ 16);

f. Defendants engaged in ex parte communications regarding children and parents involved in Truancy Court (see, e.g., Affidavit of Sherry Arias, sworn to on Mar. 27, 2010, ¶ 19; Alice F. Affidavit, supra, ¶ 15);

g. Defendants failed to keep any stenographic or other verbatim record of Truancy Court hearings (see, e.g., Affidavit of Rozanne Thomasian, sworn to on Mar. 25, 2010, ¶ 13);

h. Plaintiffs did not get a meaningful opportunity to participate in their Truancy Court hearings (see, e.g., Affidavit of Bethany L., sworn to on Mar. 27, 2010, ¶¶ 16, 27; Arias Affidavit, supra ¶¶ 14, 15).

6. The day on which plaintiffs filed suit, the National Office of the ACLU and the ACLU's Rhode Island affiliate issued a press release explaining the facts of the case and plaintiffs' legal arguments. In the press release, in addition to quotes by local attorney Amy Tabor and Rhode Island ACLU Executive Director Steven Brown, Dahlberg was quoted: "The Truancy Court system appears to have thrown the due process clause of the United States and Rhode Island Constitutions out the window, and it is imperative that Family Court administrators and magistrates follow the law. . . . Pushing kids into the juvenile justice

system is not the way to help at-risk youth graduate from high school and, in fact, only increases the likelihood that they will ultimately end up in the criminal justice system."

7. The "case page" on the official website of the ACLU provides a description of the case and a link to the publicly available complaint. Placing the case in the context of the ACLU's other work in the areas of education and juvenile justice, the page states: "This case is part of the ACLU's Racial Justice Program's continued efforts to end the school-to-prison pipeline wherein children are funneled out of the public schools and into the juvenile and criminal justice systems."

8. Later on the day of the filing suit, plaintiffs held a press conference attended by plaintiffs Elizabeth Boyer, Roseanne Thomasian, and Debralee Bowen as well as plaintiffs' counsel Konanova and Amy Tabor.

9. During the press conference, plaintiffs made the following points, among others:

    a. Plaintiff Boyer said that Westerly's truant officer served a truancy summons on her after her son had been absent twice from school and tardy five times; that one of the Defendant Judges told her that if her son was found guilty of the truancy charge he could be sent to the Training School; that school officials subsequently told her they had determined her son's problems were a result of unmet special education needs and that the truancy charges were dropped. As quoted by the Providence Journal, Boyer said: "It's not OK to just railroad [children] into court. . . . It's not fair that he's at risk of being taken away from me."

    b. Plaintiff Thomasian said that her daughter's absences from school were the result of medical problems and that the daughter's involvement with Truancy Court had exacerbated the medical problems. As quoted by the Providence Journal,

Thomasian said: "It's a whole process of bullying and intimidation. . . . You live in fear that if you do anything, you are going to lose your child or go to jail."

10. During the press conference, Konanova read a prepared statement explaining the legal arguments in the case. However, the only comment reported by the Providence Journal in the exhibit to the Defendant Judges' motion was: "the plaintiffs are simply seeking a change in the way truancy courts do business in Rhode Island: 'Stop depriving children and their parents of their basic constitutional rights.'"

11. During the press conference, Tabor read a prepared statement. She was not quoted or even mentioned in the Providence Journal article attached to the Defendant Judges' motion.

12. On March 30, 2010, Konanova posted a blog entry to the official blog of the ACLU: The Blog of Rights. The entry restated the story of the lead Plaintiff child, Jeremy Bowen, as told by his mother in her affidavit. The entry then explained the factual background and the legal arguments in the case as put forth in the complaint. The blog also placed the case in the context of ACLU's other work in the areas of education and juvenile justice, again stating: "This case is part of the ACLU's Racial Justice Program's continued efforts to end the school-to-prison pipeline wherein children are funneled out of the public schools and into the juvenile and criminal justice systems."

13. One day later, on March 31, 2010, the Providence Journal published an article entitled "Judge Jeremiah Goes on the Defensive." The article quoted the Chief Judge extensively including a number of statements about Truancy Court and this lawsuit. According to the article, "Jeremiah and his top aide, Ronald Pagliarini, who also is named as a defendant in the lawsuit filed in Superior Court, initially refused to talk about the Truancy Court

beyond the [Family Court's] news release. But Jeremiah called The Journal on Tuesday afternoon to further discuss the ACLU's charges."

14. As reported by the Providence Journal, that discussion included the following comments:

> "It is understandable that some observers may view the court's truancy program as 'tough love' because the goal is to rehabilitate our children — to not give up on them despite the excuses — and to make sure they get to school," he said in his statement. "The program has had many successes statewide."
>
> Jeremiah pointed out that in the 2008-09 school year, 70 percent of the students in the program showed increased attendance, and 55 percent saw improvement in their grades.
>
> He said that the schools — not the Family Court — are the ones who file the truancy charges against students. He also said that he is opposed to having a stenographer attend every hearing, because the costs to the state would be exorbitant.

(Attached hereto as Exhibit 2)

15. On April 9, 2010, a reporter from Rhode Island Lawyers Weekly ("RILW") called plaintiffs' counsel Thomas Lyons and left a message. Lyons returned the call on April 12th and answered a number of questions about the litigation posed by the reporter (and declined to answer at least one question, to his recollection). Those questions and answers were the basis for the article that RILW published on April 15, 2010, and about which the Defendant Judges complain in their motion.

16. On April 22, 2010, there was a hearing before Presiding Justice Gibney. During that hearing, she announced she would assign the case to Justice Carnes and, at Lyons' request, would grant the PHV motions. No defendant or counsel present objected to the motions, although Assistant Attorney General James Lee, counsel for the Family Court administrators, noted that the Defendant Judges had still not retained counsel (some 22 days after the pleadings were served and filed) and asked that no rulings be made until

the Defendant Judges had retained counsel. Judge Gibney stated: "The motions for pro hac are granted. If there's any particularly pressing objection, that can always be revisited, but it would have to be a pretty good one." Trans. at 5, lines 22-25 (Exhibit A to the Defendant Judges' motion).

17. On May 12, 2010, Justice Carnes held a hearing during which he entered a consent order respecting a settlement between plaintiffs and the Woonsocket defendants.

18. On May 24, 2010, the Defendant Judges and the Family Court administrators filed motions to dismiss the complaint based in part on the Superior Court's alleged lack of subject matter jurisdiction.

19. In an interview on May 31, 2010, Chief Judge Jeremiah said:

> Q. In response to the ACLU lawsuit, the Woonsocket School Department has agreed to stop participating in your Truancy Court. Are you concerned that your legacy will be dismantled once you retire?
>
> A. <u>They don't want to spend the money, that's what that's about.</u> They love the Truancy Court in Woonsocket.
>
> Q. What do you think could make the Truancy Court better?
>
> A. More help for the local school districts. And schools making adjustments. I had a kid who would never understand algebra, [he would] fail algebra, and they kept putting him in the algebra class. Just put him in something else instead of failing him. (emphasis added).

(Attached hereto as exhibit 3).

20. On June 7, 2010, Justice Carnes held a hearing on the entry of a consent order respecting a settlement between plaintiffs and the North Providence defendants as well as the entry of a scheduling order respecting the pending motions. The Defendant Judges did not mention during that hearing that they had or were filing the same day their motion to revoke the PHV admissions.

21. During that hearing, Justice Carnes stated: "I can assure everyone that is here in the courtroom, I have no opinion one way or the other how this would, in fact, work out, and I'm kind of eager to read everybody's memorandums on it...." (Trans. of June 7, 2010, hearing, p.28, attached hereto as exhibit 4).
22. As of the date this objection was filed, the only hearing scheduled respecting the claims against the Defendant Judges is the hearing on their motion to dismiss and motion to strike set for August 3, 2010.
23. As of the date this objection is filed, the court has not scheduled a hearing on plaintiffs' pending motions nor has the court scheduled a trial on the merits.
24. As of the date this objection is filed, no party has requested a jury trial.
25. Since this suit was filed, the ACLU has been contacted by more than 38 parents or students seeking to participate in this case as plaintiffs or witnesses. They would potentially represent students and parents in the Defendant Municipalities as well as 14 municipalities not currently included as defendants in this lawsuit. (Affidavit of Joshua Reigel, ¶¶2-3, attached to Plaintiffs' Response to Defendants' Motions to Dismiss).

The Federal and Rhode Island Constitutions Protect the Ability of Dahlberg, Konanova and Lyons to Speak Publicly About this Lawsuit

Courts, including the United States Supreme Court, the United States District Court for the District of Rhode Island and the Rhode Island Supreme Court have repeatedly denied motions seeking to punish attorneys for extra-judicial comments. In so doing, they have held that the First Amendment protects the right of counsel and litigants to comment on legal proceedings. Gentile v. State Bar of Nev., 501 U.S. 1028 (1991); see also In re Perry, 859 F.2d 1043 (1st Cir. 1988); Ruggieri v. Johns-Manville Prods. Corp., 503 F. Supp. 1036 (D.R.I. 1980)

(Judge Pettine); State v. Lead Indus. Ass'n, 951 A.2d 428 (R.I. 2008); In re Cross, 617 A.2d 97 (R.I. 1992).[1]

In Gentile, for example, the petitioner was a criminal defense lawyer in Nevada. According to the Supreme Court opinion, "Hours after his client was indicted on criminal charges, petitioner Gentile . . . held a press conference. He made a prepared statement and then he responded to questions." 501 U.S. at 1033. Gentile's statement compared the allegations against his client with "the French Connection case" in New York as well as other cases in Miami and Chicago but added "all three of those cities have been honest enough to indict the people who did it; the police department, crooked cops." He went on to say that the evidence would show that the person who had committed the alleged crimes was a particular detective whom he identified by name. Gentile said his client was "being used as a scapegoat to try to cover up for what has to be obvious to people at the Las Vegas Metropolitan Police Department and at the District Attorney's office." Gentile said the "so-called other victims . . . are known drug dealers and convicted money launderers and drug dealers; three of whom didn't say a word about anything until after they were approached by Metro and after they were already in trouble and are trying to work themselves out of something."

Six months later, after the criminal case was tried to a jury and Gentile's client was acquitted on all counts, the State Bar of Nevada filed a complaint against Gentile alleging a violation of Nevada Supreme Court Rule 177. That Rule governed pre-trial publicity and was "almost identical" to ABA Model Rule of Professional Conduct 3.6. That Rule provides a so-called "safe harbor" that said:

[1] Plaintiffs contend that Article 1, § 21 of the Rhode Island Constitution affords similar protections to counsel and litigants. See Beattie v. Fleet Nat'l Bank, 746 A.2d 717 (R.I. 2000); Town of Barrington v. Blake, 568 A.2d 1015 (R.I. 1990).

> [A] lawyer involved in the investigation or litigation of a matter may state without elaboration:
> (a) the general nature of the claim or defense;
> (b) the information contained in the public record;
> (c) that an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;
> (d) the scheduling or result of any step in the litigation;
> (e) a request for assistance in obtaining evidence and information necessary thereto;
> . . . .

Notably, this "safe harbor" is similar to the "safe harbor" in Rhode Island's Rule 3.6.[2] The Nevada Supreme Court upheld a ruling that Gentile had violated the Rule and that he should be privately reprimanded.

The United States Supreme Court reversed and issued three separate opinions, two of which agreed that the Nevada Rule was at least void for vagueness.[3] The Court noted that the trial occurred six months after the press conference and that the trial court succeeded in impaneling a jury that had not been affected by the media coverage. Writing for a plurality of the Court including Justices Marshall, Blackmun, and Stevens, Justice Kennedy said:

> Nevada's application of Rule 177 in this case violates the First Amendment. Petitioner spoke at a time and in a manner that neither in law nor in fact created any real prejudice to his client's right to a fair trial or to the State's interest in the enforcement of its criminal laws. Furthermore, the Rule's safe harbor provision, Rule 177(3), appears to permit the speech in question, and Nevada's decision to discipline petitioner in spite of that provision raises concerns of vagueness and selective enforcement.

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[2] Rhode Island's current version of Rule 3.6 deletes the phrase "without elaboration" and adds a subpart that permits a "reasonable lawyer" to make a statement that she "believe[s] is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client."

[3] Four justices joined in Justice Kennedy's opinion and four joined in Chief Justice Rehnquist's opinion. The ninth justice, Justice O'Connor, agreed in part with the opinion written by Justice Kennedy and in part with the opinion written by the Chief Justice. She agreed with the Chief Justice that a State may regulate speech by lawyers representing clients in pending cases. She also agreed with the Chief Justice that the appropriate standard for regulating such lawyers' speech was whether it had a "substantial likelihood of material prejudice." Gentile, 501 U.S. at 1081.

Id. at 1033-34. Justice Kennedy went on: "This case involves punishment of pure speech in the political forum. Petitioner engaged not in solicitation of clients or advertising for his practice . . . . His words were directed at public officials and their conduct in office." Id. at 1034. Justice Kennedy added:

> The judicial system, and in particular our criminal justice courts, play a vital part in a democratic state, and the public has a legitimate interest in their operations . . . . Public vigilance serves us well, for "the knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power. . . .Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account."

Id. at 1035 (quoting In re Oliver, 333 U.S. 257, 270-271 (1948)).

Justice O'Connor concurred in the holding that Nevada's rule was void for vagueness. Id. at 1081-82. She commented that Gentile "made a conscious effort to stay within the boundaries of this 'safe harbor.'" Id. at 1082.

Chief Justice Rehnquist dissented in part, along with Justices Scalia, White, and Souter. In his opinion, he said that the test for whether the authorities may discipline an attorney for pre-trial statements is whether the statements created a "substantial likelihood of material prejudice." Id. at 1061. He stated: "That test will rarely be met where the judge is the trier of fact, since trial judges often have access to inadmissible and highly prejudicial information and are presumed to be able to discount or disregard it." Id. at 1077.

In Ruggieri, Judge Pettine confronted a motion virtually identical to the Defendant Judges' motion here. Ruggieri v. Johns-Manville, 503 F. Supp. 1036 (D.R.I. 1980). Attorney Ronald Motley had been admitted in the United States District Court to represent plaintiffs who alleged they had been injuriously exposed to asbestos products manufactured or distributed by defendants. While the asbestos cases were pending, Motley appeared on a CBS television show

called "See You in Court." During this show he discussed evidence that a particular asbestos company's president had hidden paperwork that allegedly showed defendants were aware of the dangers of asbestos as far back as 1935 and that defendants had failed to tell asbestos workers about the dangers. One of the defendants moved to disqualify Motley from participating in the asbestos cases pending in the District Court and to prohibit him from making extra-judicial comments concerning such cases.

Judge Pettine noted that "[t]he Judicial Conference, at its September 1980 meeting, abandoned prohibiting attorney comment in civil litigation feeling that this area can best be handled by special orders when warranted." Id. at 1040. He then described the various steps the court can take in a civil case to prevent a jury from being prejudiced by extra-judicial news or comments. Judge Pettine said:

> After many years on the bench, it is this Court's opinion that jurors who are properly instructed by the court as to the solemnity of their service rise to the occasion and express their biases candidly and honestly. It is a disservice to lose faith in these men and women, who in the main are being called upon for the first time in their lives to participate in the noble cause of justice. As they can be screened before trial so can they be controlled during the trial even to the point, as I have already stated, of sequestering them if the circumstances so demand. I know of no studies that disprove the conclusion that overwhelmingly they will follow instructions of the court not to read any news accounts of the case, discuss the evidence, or place themselves in any prejudicial ambience.

Id. at 1039-1041. Judge Pettine concluded:

> There is no basis for any conclusion that Mr. Motley's statements impacted on any potential jurors. He was exercising his First Amendment rights and it has not been shown that his speech trespassed on the defendant's right to a fair trial. It would be a serious invasion of a treasured liberty to prohibit him from continuing to discuss this very controversial issue of asbestos inhalation. When the trial is reached, at some time in the future, the Court can then assess what if anything need be done to assure a fair trial...The defendant's motion is denied.

Id.

The comments by Justice Kennedy and Judge Pettine are echoed in the Commentary to Rhode Island's Rule 3.6:

> It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the rights of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberations over questions of public policy.

More recently, the Rhode Island Supreme Court overturned Superior Court decisions finding Attorney General Patrick Lynch in civil contempt for extra-judicial comments he made shortly before jury selection and during the trial of what is probably the most highly publicized civil litigation in the history of the state. State v. Lead Indus. Ass'n, 951 A.2d 428 (R.I. 2008). Just before jury selection, the trial judge granted a motion to compel production of a settlement agreement between the state and one of the defendants. Referring to counsel for the other defendants, the Attorney General reportedly said: "This discovery is just part of the despicable moves the company lawyers are willing to make to slow down justice." Id. at 459.

Citing Rule 3.6 of the Rules of Professional Conduct, the defendants made a motion requesting an order that the Attorney General refrain from making public statements attacking the credibility of defendants or their counsel. The trial justice issued an order that required the Attorney General to conform his public statements to Rule 3.6. The trial began and after a favorable evidentiary ruling, the Attorney General publicly commented: "We want to continue our search for justice before this jury and not give in to those who would spin and twist the

facts." The trial justice found the Attorney General in contempt of his order for making this statement and issued a second order requiring the Attorney General to refrain from extra-judicial comments.

The jury subsequently returned a verdict for the state. The Attorney General stated: "The [defendants] failed to step up and clean up the problem they created . . . the legal process held them accountable and said you can't duck and run." The trial judge again held the Attorney General in civil contempt for these comments.

The Supreme Court reversed both findings of civil contempt. It noted the United States Supreme Court decision in Gentile that a lawyer's free expression may be limited to the extent that the speech presents a "substantial likelihood of materially prejudic[ing]" a fair trial. Id. at 465. The Court said that the record "did not support the conclusion that the Attorney General knew or reasonably could have known that his remarks could create a substantial likelihood of material prejudice." Id. at 465. "Furthermore, defendants have not alleged or shown that any jurors saw or were influenced by the comments. Rather, the jury specifically and repeatedly was ordered not to read any media coverage of the trial. Although we recognize that actual prejudice need not be shown [citing Gentile], we are not persuaded that the comment ["spin and twist the facts"] would cause any prejudice, let alone material prejudice, to defendants." Id. at 466.[4]

The comments of plaintiffs' counsel are certainly much less inflammatory than those that these Courts have declined to sanction. Gentile accused the Las Vegas police of corruption and of hiding corruption and the prosecution's witnesses of being felons and liars. Motley accused the asbestos defendants of hiding the dangers of asbestos and knowingly hiding those dangers from asbestos workers. Our Attorney General said the lead paint companies and their counsel

[4] The Supreme Court reversed the second finding of civil contempt on the grounds that the trial court's second order was not sufficiently clear to be enforceable. Lead Indus. Ass'n, 951 A.2d at 467-468.

were "despicable," that they would "slow down justice," that they would "spin and twist the facts," and that they would try to "duck and run." The comments of plaintiffs' counsel discussing alleged due process violations and challenging the effectiveness of the Truancy Court program are sedate by comparison.

Moreover, the Defendant Judges have completely failed to show that any prospective juror could possibly be prejudiced by counsel's comments.[5] Contrary to the Defendant Judges' statement on page 4 of their memorandum, Lyons has not "publically admitted that such publicity has had a material effect on the case by prompting some defendants to explore settlement . . ." nor did Lyons say that to the RILW reporter. The article includes the following question and answer:

> Q. What has the reaction to the lawsuit been?
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> A. There have been two reactions. One, the publicity has prompted a number of additional phone calls from parents whose children are involved in the Truancy Court and who are interested in getting involved in the case. We are looking at whether or not to add additional plaintiffs and whether or not it would involve suing additional school districts. And some defendants' counsel have expressed an interest in sitting down and talking about whether or not this case can be resolved without significantly more litigation. (emphasis added).

Thus, Lyons' comment, as set forth in the article, makes clear that there have been two effects of the lawsuit, not of the publicity. The publicity has prompted more potential plaintiffs and witnesses to come forward, a clearly permissible goal of such publicity under Rule 3.6. The other, clearly differentiated effect of the lawsuit is that some defendants' counsel have been willing to discuss settlement. It is a substantial mischaracterization of Lyons' comments to construe them as an "admission" that the publicity was cowing defendants into settlements.

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[5] The United States Supreme Court recently held that pre-trial publicity did not prejudice Jeffrey Skilling's right to a fair trial in Houston in the criminal case alleging he had defrauded Enron of his "honest services." Skilling v. United States, No.08-1394, slip op. at 54 (June 24, 2010). Certainly, if Skilling can get a fair trial in the city financially devastated by Enron's collapse, the Defendant Judges can get a fair trial in a civil case here.

Moreover, Chief Judge Jeremiah himself contradicted the mischaracterization during his May 31st interview when he told a reporter that the reason that the Woonsocket defendants settled was: "They don't want to spend the money [to defend the suit], that's what that's about."

Chief Judge Jeremiah and the Family Court have engaged in the same kind of publicity respecting the alleged virtues of Truancy Court about which they now complain with respect to plaintiffs' counsel. For example, as stated above, defendant Jeremiah has commented on it at least twice in interviews since this suit was filed. Numerous times since Truancy Court was created the Family Court has publicly trumpeted its purported successes.

The Constitutions of the United States and Rhode Island protect the comments by Dahlberg, Konanova and Lyons because they are "pure speech in the political forum" "directed at public officials and their conduct in office." Gentile, 501 U.S. 1034. Certainly, their comments are much less inflammatory than those made by Gentile, Motley or our own Attorney General, none of which were punished. In any event, the comments fall well within the "safe harbor" of Rule 3.6 with respect to the "general nature of the claim or defense," Rule 3.6(c)(1), "the information contained in the public record," Rule 3.6(c)(2), and "a request for assistance in obtaining evidence and information necessary thereto," Rule 3.6(c)(5). The court should interpret the comments to fall within the "safe harbor" of Rule 3.6(c) so as to avoid them being deemed void for vagueness as was Nevada's version of the Rule.

The court has already said that all the parties will get an impartial hearing. No party has requested a jury trial. Even if a party was to request and obtain a jury trial, that trial is at least months away. The movants have not shown that any prospective juror has been materially prejudiced by counsel's comments. Finally, the court is fully capable of conducting a voir dire

and instructing jurors in a manner that protects all parties' right to a fair trial. Accordingly, there has been no violation of Rule 3.6 by plaintiffs' counsel.[6]

Dahlberg, Konanova and Archer Are Eminently Qualified to Represent Plaintiffs Regardless of Whether This Matter is Certified As a Class Action

The fact that this Court has yet to rule on plaintiffs' motion for class certification is not grounds for revoking the PHV admissions of Dahlberg, Konanova and Archer. In complex civil rights class actions, courts have routinely permitted the PHV admission of attorneys with particular expertise in such matters prior to the actual certification of a class. The experience and knowledge of such attorneys are often crucial to obtaining the class certification.

The Rhode Island Supreme Court's required forms provide several possible reasons for counsel's PHV admission. The first one states: "The case/agency proceeding involves the following complex areas of the law, in which pro hac vice counsel concentrates (emphasis added)." In the space under this, Dahlberg, Konanova and Archer each set forth: "large, systemic, class-action litigation alleging constitutional violations."[7] Since plaintiffs claim "large, systemic . . . constitutional violations," the PHV applications apply regardless of whether this case is certified as a class action.

In addition, a brief review of plaintiffs' counsels' backgrounds demonstrates that their skills extend way beyond the mere mechanics of class actions to the design and administration of

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[6] The Defendant Judges' motion also constitutes an attempt to stifle free speech that is barred under Rhode Island's so-called "Anti-SLAPP" statute. R.I. Gen. Laws § 9-33-1, et seq. The Anti-SLAPP statute protects "a party's exercise of its rights of petition or of free speech" including "any... written or oral statement made in connection with an issue under consideration or review by a...judicial body..." R.I.G.L. § 9-32-2(e). The Anti-SLAPP statute provides "immunity . . . as a bar to any civil claim, counterclaim, or crossclaim directed at petition or free speech as defined in subsection (e) of this section, except if the petition or free speech constitutes a sham." The statute does not define a "claim." Plaintiffs submit that the Defendant Judges' motion constitutes a "claim" within the intention of the statute because the motion is a pleading intended "to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances; that such litigation is disfavored and should be resolved quickly with minimum cost to citizens who have participated in matters of public concern." R.I.G.L. § 9-32-1.

[7] The Defendant Judges' motion represents that PHV counsel said they "specialized" in class action litigation. That representation is inaccurate.

all types of civil rights advocacy. Given that the Defendant Judges have filed three substantive motions, including this one, in the last several weeks, these skills are particularly important. Dahlberg is a graduate of Stanford University and the New York University School of Law. Before joining the legal staff of the American Civil Liberties Union (ACLU) in 1989, she practiced in the New York office of O'Melveny & Myers. Dahlberg is presently a Senior Staff Attorney with the ACLU's Racial Justice Program. In that capacity, she has been involved in non-litigation advocacy efforts designed to fix badly-administered government systems in Ohio, Massachusetts and New Jersey, and litigated complex civil rights cases designed to protect the rights of the poor, including indigent persons accused of criminal wrongdoing and abused and neglected children in Kentucky, Michigan, Montana, Connecticut, South Dakota, Hawai'i, Missouri, New York, and Pennsylvania, Many, but not all, of these cases were certified as class actions. Dahlberg first began working on this matter in June, 2009.

Konanova is a magna cum laude graduate of Northwestern University and a cum laude graduate of Harvard Law School. At Harvard, her professors included the former dean, Elena Kagan, now Solicitor General of the United States and nominee to the United State Supreme Court, and the current Dean, Martha Minow. Konanova was the Articles Co-Chair of the Harvard Law Review where she authored three publications, all on questions of constitutional and statutory rights. Konanova was also an editor of the Harvard Civil Rights-Civil Liberties Law Review, and a member of the team that won the Ames Moot Court Competition. As a third year law student, Konanova argued a discrimination case in the First Circuit, Kouvchinov v. Parametric Tech. Corp., 537 F.3d 62 (1st Cir. 2008). She clerked for Judge Kim McLane Wardlaw on the Ninth Circuit Court of Appeals, where she worked on at least one-half dozen opinions, and more than 60 cases. She is presently a Litigation Fellow with the ACLU's Racial

Justice Program before returning to private practice at Cravath, Swaine & Moore. At the ACLU, Konanova has worked on and entered her appearance in a civil rights lawsuit in Connecticut respecting the City of Hartford's school desegregation program. She has also worked on a civil rights class action in Michigan challenging that state's method of providing indigent defense, in addition to numerous other projects in the areas of education and criminal justice. Konanova researched and drafted much of the pleadings filed in this case. She first began working on this matter in October 2009.

The Defendant Judges' motion also states an obvious falsehood regarding Konanova's PHV motion. Contrary to the Defendant Judges' assertion, Konanova never claimed to have been practicing for 60 months. Rather, the standard PHV forms required by the Rhode Island Supreme Court require that counsel set forth how many times in the prior 60 months she has applied or been admitted in Rhode Island. Konanova answered "N/A", i.e., "not applicable," because she had not previously applied or been admitted in Rhode Island. Completing this part of the form does not mean counsel is claiming to have been practicing for five years. Nor does it mean that out-of-state counsel must have five years of experience before they can be admitted here.[8] The standard PHV form does not ask out-of-state counsel how long they have been admitted as attorneys in their home jurisdiction; thus, nothing in Konanova's application could possibly be construed as a failure to disclose the length of her admission or an affirmative misrepresentation regarding that fact. The Defendant Judges' accusation that Konanova made an affirmative misrepresentation on her PHV motion is facially false.[9]

---

[8] Plaintiffs' local counsel is aware of numerous occasions in which out-of-state counsel with less than five years of practice have been admitted PHV. We are not aware of any other occasion in which any other party or judge has raised this argument.

[9] Plaintiffs believe this and other aspects of the Defendant Judges' motion violate Super.R.Civ.R. 11. See Pleasant Mgmt., LLC v. Carrasco, 918 A.2d 213 (R.I. 2007); Michalopoulos v. C&D Restaurant, Inc., 847 A.2d 294 (R.I. 2004); see also Rule of Professional Conduct 3.3, "Candor Toward the Tribunal." Plaintiffs are not presently seeking sanctions for this violation but reserve the right to do so in the event of future violations.

Archer is a graduate of Smith College and Yale Law School. She is a professor at New York Law School where she directs the Racial Justice Project and teaches civil rights and litigation-related courses. Archer has worked with the ACLU and the NAACP Legal Defense and Education Fund, Inc. on civil rights and class action lawsuits in Florida, Illinois, Michigan and New York. Before joining academia, she worked at Simpson, Thacher & Bartlett. Archer first began working on this matter in August 2009. She did not attend the March 29, 2010 press conference nor has she been quoted in any press release or other public statement respecting this case.

Lastly, it should be noted that the Defendant Judges do not cite a single case in support of their argument that PHV admissions of Dahlberg, Konanova and Archer should be revoked. Plaintiffs have cited Ruggieri, 503 F. Supp. 1036, in which Judge Pettine declined to revoke such an admission based on extra-judicial comments that occurred after the admission. In addition, when Presiding Justice Gibney granted the PHV motions, she said: "The motions for pro hac are granted. If there's any particularly pressing objection, that can always be revisited, but it would have to be a pretty good one." Trans. at 5, lines 22-25.

While plaintiffs are aware of a few other cases in which the local federal or state courts have been asked to revoke PHV admissions, none of them supports the Defendant Judges' position. In In re Levine, 840 A.2d 1098 (R.I. 2003), a per curiam decision by the Rhode Island Supreme Court, the Court declined to revoke Levine's PHV admission. Levine had filed a PHV motion in Superior Court asserting there were no disciplinary proceedings pending against him when, in fact, there were.

In Young v. City of Providence, 404 F.3d 33 (1st Cir. 2005), a highly publicized civil rights case, the trial judge found that plaintiffs' counsel had made misstatements in a trial

memorandum that violated Rule 11 and revoked the PHV admissions of two lawyers from New York. She required local counsel to try the case. The First Circuit found that while some of the statements in the memorandum were inaccurate, the memo as a whole did not violate Rule 11. It vacated the sanctions and reinstated the PHV admissions of the two New York lawyers.

In Obert v. Republic Western Insurance Co., 398 F.3d 138 (1st Cir. 2005), the trial judge found that PHV and local counsel had violated Rule 11 through a motion to recuse that allegedly mischaracterized the judge's conduct. He revoked the PHV admissions. The First Circuit parsed the history of the case and found that the motion, while unfounded and ill-advised, did not violate Rule 11. The Court reinstated the PHV admissions.

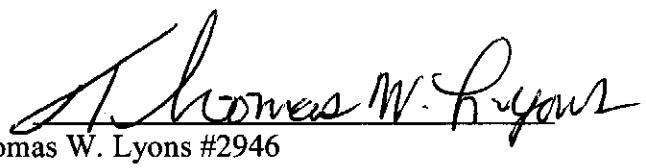
Finally, in Kampitch v. Lach, 405 F. Supp. 2d 210 (D.R.I. 2005), the Court denied a PHV motion after finding that the plaintiffs' counsel had signed the complaint before his PHV motion was granted, had falsely stated in his PHV motion that he had not previously applied for PHV admission in the district and had been sanctioned in several other courts. At the same time, the court noted that the District of Rhode Island had granted 98 percent of PHV motions during a recent period.

Nothing in the Defendant Judges' motion or elsewhere demonstrates any similar conduct that would justify revoking the PHV admissions. As set forth in the first part of this objection, the federal and state Constitutions protect Dahlberg's and Konanova's participation in the press conference and press releases. Those activities do not violate Rule 3.6. Moreover, they and Archer are very qualified to represent plaintiffs on their civil rights claims as well as the class action aspects of the complaint. The Defendant Judges' motion is unfounded.

Conclusion

The Court should deny the Defendant Judges' motion to revoke the pro hac vice admissions of attorneys Robin Dahlberg, Yelena Konanova, and Deborah Archer.

Respectfully submitted,

By: 

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I hereby certify that on this 25 day of June, 2010, a copy of the within was sent to the above counsel by regular mail.

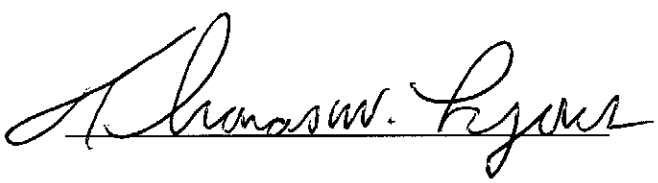


EXHIBIT 1

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

ELIZABETH BOYER, individually, and by and for her minor son, JEREMY BOWEN; *et al.*, Plaintiffs, v. CHIEF JUDGE JEREMIAH S. JEREMIAH; *et al.*, Defendants.	CLASS REPRESENTATION C.A. No.:

MISCELLANEOUS PETITION FOR ADMISSION PRO HAC VICE

Thomas W. Lyons hereby requests that Yelena Konanova
Petitioner
be admitted pro hac vice in the above-case/agency proceeding as associate trial counsel with local associate counsel identified below, on the following grounds [Please check appropriate grounds and provide specifics]:

X The case/agency proceeding involves the following complex areas of the law, in which pro hac vice counsel concentrates:

large, systemic, class-action litigation alleging constitutional violations

_ Pro hac vice counsel=s long-standing representation of the client:

_____

_ The local trial bar lacks experience in the field of:

_____

_ The case/agency proceeding involves complex legal questions under the law of a foreign jurisdiction with which pro hac vice counsel is familiar, specifically:

_____

_ The case/agency proceeding requires extensive discovery in a foreign jurisdiction convenient to pro hac vice counsel, as follows:

_ It is a criminal case, and pro hac vice counsel is defendant=s counsel of choice.

_ Other:

I hereby represent that I am a member in good standing of the bar of the State of Rhode Island and that I am actively engaged in the practice of law out of an office located in this state.

Attorney for: Plaintiffs

Dated: 3-27-10

Pro Hac Vice Counsel

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

ELIZABETH BOYER, individually, and by and for her minor son, JEREMY BOWEN; *et al.*, Plaintiffs, v. CHIEF JUDGE JEREMIAH S. JEREMIAH; *et al.*, Defendants.	CLASS REPRESENTATION C.A. No.:

ATTORNEY CERTIFICATION FOR PRO HAC VICE ADMISSION

1. I certify that I am a member in good standing of the bar of the State(s) of New York State, Appellate Division, First Department, without any restriction on my eligibility to practice, and that I understand my obligation to notify this Court immediately of any change respecting my status in this respect.

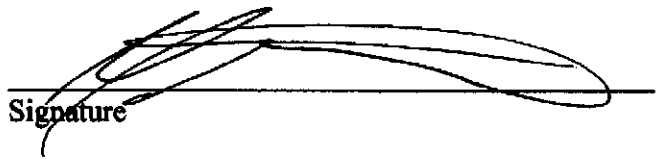
2. Within the preceding sixty (60) months, I was or am currently admitted pro hac vice, or have applied to be admitted pro hac vice, in the following cases or proceedings in this State:

N/A

3. I have read, acknowledge, and agree to observe and to be bound by the local rules and orders of this Court, including the Rules of Professional Conduct of the Rhode Island Supreme Court, as the standard of conduct for all attorneys appearing before it.

4. I acknowledge that if specially admitted to appear in the above-entitled matter that I will be subject to the disciplinary procedures of the Rhode Island Supreme Court. I hereby authorize the disciplinary authorities of the bar of the State(s) of to release any information concerning my practice in said State(s) pursuant to the request of the Disciplinary Counsel of the Rhode Island Supreme Court.

5. For purposes of this case I have associated with local associate counsel identified below, and have read, acknowledge, and will observe the requirements of this Court respecting the participation of local associate counsel, recognizing that failure to do so may result in my being disqualified, either upon the Court's motion or motion of other parties in the case.



Signature

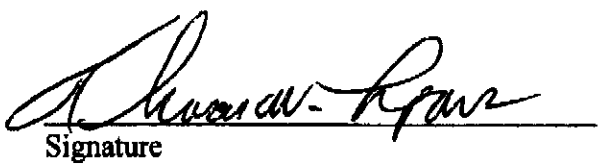
Yelena Konanova
Name

American Civil Liberties Union Foundation
Firm Name

125 Broad Street, 18th Floor, New York, NY 10004
Business Address

CERTIFICATION OF LOCAL ASSOCIATE COUNSEL

I certify that I have read and join in the foregoing Certification, and acknowledge and agree to observe the requirements of this Court as related to the participation and responsibilities of local associate counsel.



Signature

Thomas W. Lyons
Local Associate Counsel
RI Bar ID # 2946

Strauss, Factor, Laing & Lyons
Firm Name

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Providence, RI 02903
Business Address

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

ELIZABETH BOYER, individually, and by and for her minor son, JEREMY BOWEN; *et al.*, Plaintiffs, v. CHIEF JUDGE JEREMIAH S. JEREMIAH; *et al.*, Defendants.	CLASS REPRESENTATION C.A. No.:

CLIENT CERTIFICATION

I, ROZANNE THOMASIAN, certify that:

1. I am the plaintiff/defendant or an authorized representative of a corporate or business entity which is the plaintiff/defendant in this case;

2. I am aware that Attorneys Robin L. Dahlberg, Yelena Konanova, and Deborah N. Archer, are not members of the Rhode Island bar, but that they have applied for permission to appear in this case on my behalf;

3. I am also aware that, if Attorneys Robin L. Dahlberg, Yelena Konanova, and Deborah N. Archer are permitted to appear in this case, I will also be required to engage as co-counsel and pay for the services of a lawyer who is a member of the Rhode Island bar;

4. I am also aware that the Rhode Island lawyer engaged must be fully prepared to assume complete responsibility for the case at any time, and may be required to conduct the trial/ hearing/appeal in this case on my behalf (or on behalf of the corporate or business entity);

5. Having been advised of the matters set forth above, I support the request of Attorney Robin L. Dahlberg, Yelena Konanova, and Deborah N. Archer to be permitted to appear in this case on my behalf in accordance with the rules of this Court and of the Supreme Court of the State of Rhode Island.

Witness

Signature

ROZANNE THOMASIAN
Print Name

3/25/10
Date

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

ELIZABETH BOYER, individually, and by and for her minor son, JEREMY BOWEN; *et al.*, Plaintiffs, v. CHIEF JUDGE JEREMIAH S. JEREMIAH; *et al.*, Defendants.	CLASS REPRESENTATION C.A. No.:

CLIENT CERTIFICATION

I, Alice F, certify that:

1. I am the plaintiff/defendant or an authorized representative of a corporate or business entity which is the plaintiff/defendant in this case;

2. I am aware that Attorneys Robin L. Dahlberg, Yelena Konanova, and Deborah N. Archer, are not members of the Rhode Island bar, but that they have applied for permission to appear in this case on my behalf;

3. I am also aware that, if Attorneys Robin L. Dahlberg, Yelena Konanova, and Deborah N. Archer are permitted to appear in this case, I will also be required to engage as co-counsel and pay for the services of a lawyer who is a member of the Rhode Island bar;

4. I am also aware that the Rhode Island lawyer engaged must be fully prepared to assume complete responsibility for the case at any time, and may be required to conduct the trial/ hearing/appeal in this case on my behalf (or on behalf of the corporate or business entity);

5. Having been advised of the matters set forth above, I support the request of Attorney Robin L. Dahlberg, Yelena Konanova, and Deborah N. Archer to be permitted to appear in this case on my behalf in accordance with the rules of this Court and of the Supreme Court of the State of Rhode Island.

Witness

Alice F.
Signature

Alice F
Print Name

3/25/10
Date

EXHIBIT 2

Judge Jeremiah goes on the defensive

01:00 AM EDT on Wednesday, March 31, 2010

By W. Zachary Malinowski

Journal Staff Writer

PROVIDENCE — Chief Family Court Judge Jeremiah S. Jeremiah Jr. defended the state's Truancy Court on Tuesday, a day after the American Civil Liberties Union filed a class-action lawsuit charging the court with violating the constitutional rights of children and their parents.

In a three-sentence release, Jeremiah declined to comment on the specific allegations in the 71-page lawsuit in which he and a host of others, including the school superintendents in Providence, Cumberland, North Providence, Coventry, Woonsocket and Westerly, are named as defendants.

But Jeremiah argued that the Truancy Court has been a success.

"It is understandable that some observers may view the court's truancy program as 'tough love' because the goal is to rehabilitate our children — to not give up on them despite the excuses — and to make sure they get to school," he said in his statement. "The program has had many successes statewide."

Jeremiah pointed out that in the 2008-09 school year, 70 percent of the students in the program showed increased attendance, and 55 percent saw improvement in their grades.

Jeremiah and his top aide, Ronald Pagliarini, who also is named as a defendant in the lawsuit filed in Superior Court, initially refused to talk about the Truancy Court beyond the news release. But Jeremiah called The Journal on Tuesday afternoon to further discuss the ACLU's charges.

He said that the schools — not the Family Court — are the ones who file the truancy charges against students. He also said that he is opposed to having a stenographer attend every hearing, because the costs to the state would be exorbitant.

Jeremiah estimated that 3,000 to 4,000 children have passed through the program since it was started with a $500,000 grant about six years ago.

"All we are trying to do is give the children a good education," he said.

In its lawsuit, the ACLU questioned the success of the court. The civil rights organization says that the graduation rate in the state remained the same from 2003 through 2007, while dropout rates climbed from 4 to 5.8 percent.

The lawsuit, filed on Monday, charged that several Truancy Court judges and the six school systems unfairly punish students who have problems attending school or completing their school work because of special-education or medical needs. The suit also says that the truancy courts threaten at-risk children with fines, imprisonment or removal from their families.

At a news conference to announce the lawsuit, ACLU lawyers were critical of the secrecy surrounding the truancy courts. They said that proceedings are closed to the public and there is no stenographer present to record what transpires in the hearings. As a result, there is no way to review what transpired when a child is disciplined or sent to the state Training School for juvenile offenders.

bmalinow@projo.com

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EXHIBIT 3

DOLAN MEDIA COMPANY

DOLAN MEDIA NEWSWIRE STORY

Subject: R.I. Family Court chief reflects on record as retirement nears
Pub: Rhode Island Lawyers Weekly
Author: Julia Reischel
Category:
Sub-Category:
Issue Date: 05/31/2010 **Word Count:** 58

R.I. Family Court chief reflects on record as retirement nears
by Julia Reischel
Dolan Media Newswires

PROVIDENCE, RI – When he announced his retirement in April, 74-year-old Jeremiah S. Jeremiah Jr. had presided over the state's Family Court as chief judge for 23 years.

During his tenure, he was responsible for the creation of a set of rehabilitative "special problem-solving courts" that serve victims of domestic violence, juvenile criminals, truants and families with drug problems. While those innovations earned Jeremiah accolades as well as a Judge of the Year award from the National Council of Juvenile and Family Court Judges in 2005, more recently they have plunged him into controversy.

In March, the American Civil Liberties Union named Jeremiah as the lead defendant in a class-action lawsuit against the Truancy Court, alleging that it violates the due process rights of students.

The following month, Jeremiah drew fire from the Rhode Island Supreme Court when Justice Maureen McKenna Goldberg blasted him for being "autocratic" and for appearing not to understand the nature of a charge in a juvenile offender case he had heard.

Also last month, Bob Kerr, a columnist for The Providence Journal, took aim at Jeremiah, calling his reign over the Family Court secretive and declaring the court in desperate need of reform.

Jeremiah, who is set to retire on June 30, is wrapping up business and no longer hears cases. He spoke with reporter Julia Reischel last week about his career, his legacy and the controversy surrounding him as he departs the court.

Q. After law school, how did you end up in family law?

A. You know, I couldn't tell you. I enjoyed family law. I liked

helping children. I think that every child has some good in them, and I like to develop that good inside of him and help every child succeed. Instead of punishments, we needed treatments, and that's why I created these programs.

Q. How did you come up with the idea for these specialized courts?

A. A child comes in and is a truant in school, and we say, "It's important to go to school; see you in six months." Well, that doesn't cut it, so we started a Truancy Court where we see them every week, or every two weeks, depending on the case. I said to my administrator, "This is a waste of time. We tell them to go to school, and we don't see them again. We need a program." And he calls [former Rhode Island Sen. Lincoln] Chafee, and we go to him and say, "Financially, will you support it?" And he said yes. And then we had to create the program. We had the funding, but no plan. It was the first truancy program in the country.

Q. How did you get the idea for the Domestic Violence Court?

A. Before, people would come in and see whatever judge was on duty. So we started a specialty court just for domestic violence. Now, the judges handling the Domestic Violence Court specialize in that type of work. I have no tolerance for domestic violence. I grew up in a house where [we were taught] that only uneducated people use their fists.

Q. In response to the ACLU lawsuit, the Woonsocket School Department has agreed to stop participating in your Truancy Court. Are you concerned that your legacy will be dismantled once you retire?

A. They don't want to spend the money, that's what that's about. They love the Truancy Court in Woonsocket.

Q. What do you think could make the Truancy Court better?

A. More help for the local school districts. And schools making adjustments. I had a kid who would never understand algebra, [he would] fail algebra, and they kept putting him in the algebra class. Just put him in something else instead of failing him.

Q. What other specialty courts are you proud of?

A. The Family Treatment Drug Court. If a child is born positive with drugs, [the Department of Children Youth and Families] will remove the child immediately, and rightfully so. But in that court, we try to get the child together with family. It's relatively small, but it's a really satisfying calendar. Initially, when I came here, another judge asked me, "Are we a court, or are we a social service agency?" And I said, "I think we're both." And that's the issue: We're trying to help people. This is Family Court. This isn't Superior Court. We're not trying criminal cases as such. Our obligation here is rehabilitation.

Q. How do you respond to columnist Bob Kerr's accusation that the Family Court is "secretly run?"

A. You know, I can't walk, so sometimes I would sit in my chambers and hear cases with the door open, and anyone who wanted to could come in. And they should. Some days I can't make the three steps up to the bench.

Q. What is your response to Supreme Court Justice Maureen McKenna Goldberg calling your style "autocratic?"

A. I can't answer that.

Q. Can you comment more generally on the decision in that case, which upheld your order to transfer a juvenile offender out of the Training School to a residential treatment center with fewer restrictions?

A. In general, we don't have the facilities here in Rhode Island to train kids. There's a place in Pennsylvania called Glen Mills. I send the kids to Glen Mills. Why? Because they have 20 vocational courses they offer, and they learn something there. They don't learn anything in our training schools.

Q. On the eve of your retirement, is there anything you'd like to tell the bar?

A. I think the lawyers need to understand that they need to get along with each other and respect each other. I think they lost the respect for the authority, and I think they lost the respect of the opposition, and everyone's concerned about making the almighty dollar.

Q. Any idea who might replace you?

A. I have no idea. They have asked me, but I have no idea what they're thinking.

Corporate Headquarters:
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Suite 2300
Minneapolis, MN 55402
P. (612) 317-9420 | F. (612) 321-0563

EXHIBIT 4

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. SUPERIOR COURT

ELIZABETH BOYER, ET ALS)
)
VS.) CASE NO: 2010-1858
)
JEREMIAH S. JEREMIAH)

HEARD BEFORE THE HONORABLE
MR. JUSTICE WILLIAM E. CARNES
JUNE 7, 2010

APPEARANCES:

THOMAS LYONS, ESQ., ROBIN DAHLBERG, ESQ., ELENA KONANOVA and AMY TABOR, ESQ., ON BEHALF OF THE PLAINTIFFS

J. RENN OLENN, ESQ., and MICHAEL B. FORTE, ESQ., ON BEHALF OF JUSTICE JEREMIAH JEREMIAH, MAGISTRATE ASQUITH, MAGISTRATE HASTINGS, MAGISTRATE PAULHUS AND MAGISTRATE WRIGHT

JOHN ANDERSON, ESQ., ON BEHALF OF THE TOWN OF COVENTRY AND SUPERINTENDENT THOMAS BRADY

JOSEPH ROTELLA, ESQ., ON BEHALF OF THE TOWN OF CUMBERLAND AND SUPERINTENDENT DONNA MORRELLE

JOHN TURANO, ESQ., AND BETH McSWEENEY, ESQ., ON BEHALF OF THE TOWN OF WESTERLY AND SUPERINTENDENT ROBERT GERARDI

MELISSA TUCKER, ESQ., AND JULIE SACKS, ESQ., FOR THE CITY OF PROVIDENCE, PROVIDENCE SCHOOL DEPARTMENT

JAMES LEE, ASSISTANT SPECIAL ATTORNEY GENERAL AND SUSAN URSO, ASSISTANT SPECIAL ATTORNEY GENERAL ON BEHALF OF THE STATE OF RHODE ISLAND

PATTI M. AHEARN
REGISTERED PROFESSIONAL REPORTER

C E R T I F I C A T I O N

I, PATTI M. AHEARN, hereby certify that the succeeding pages, 1 through 30, inclusive, are a true and accurate transcript of my stenographic notes.

PATTI M. AHEARN
COURT REPORTER

JUNE 7, 2010

THE CLERK: In the matter of Boyer versus Jeremiah.

MR. LYONS: Your Honor, Thomas Lyons for the plaintiff. I would like to introduce co-counsel who are here today. This is Robin Dahlberg from the National Office of the American Civil Liberties Union, and Elena Konanova, also from the national office who is here pro hac vice, and also Amy Tabor who is here all the way here from Pawtucket.

THE COURT: Thank you, Mr. Lyons.

MR. FORTE: Michael B. Forte, Junior on behalf of Judge Jeremiah, Magistrates Asquith, Hastings, Newman, Paulhus and Wright.

MR. OLENN: J. Renn Olenn for the same parties.

MR. McALLISTER: Kevin McAllister for the Town of North Providence and its school department superintendent Doctor Donna Ottaviano.

MR. ANDERSON: John Anderson from Palmer & Dodge for the Town of Coventry superintendent Thomas Brady.

MR. ROTELLA: Joseph Rotella for the Town of Cumberland for the Cumberland School Department and Superintendent Donna Morrelle. Mr. Hefner, who is town solicitor, is out of state today and asked me to handle it for the town.

MR. TURANO: John Turano for the Town of Westerly.

MS. McSWEENEY: Beth McSweeney also for the Town of Westerly.

MS. TUCKER: Melissa Tucker for the City of Providence, Providence School Department.

MR. LEE: Jim Lee for the State of Rhode Island.

MS. URSO: For the record, Susan Urso along with Mr. Lee.

MS. SACKS: Julie Sacks for the City of Providence.

THE COURT: You're with Miss Tucker?

MS. SACKS: Yes, your Honor.

THE COURT: Thank you. Is there anybody else?

The first order of business, let me thank you all for your patience and I do apologize. It is a little after 10. I know you've been here since 9:30. I had a 9 a.m. conference that was scheduled, and for whatever reason those parties got here a little late. It is a criminal matter that has been pending since last summer, and we're looking for ways to try to resolve it as opposed to exploring a piecemeal appeal on the different components. I'll try to keep myself more timely as this case proceeds.

I did get a proposed scheduling order from the plaintiffs in this particular matter. Thank you, Mr. Lyons--and I have looked at that--I've also got letter from Mr. Lee. Presently, I have not read the motions,

but there is a motion to dismiss in lieu of filing an answer that has been forwarded by the State, and Mr. Olenn, your office is on that sir?

MR. OLENN: We have our own motion to dismiss filed, your Honor, on behalf of the chief judge and magistrates.

THE COURT: I have that package, as well as the omnibus assignment form on that. Is there a motion to dismiss from the State yet?

MR. LEE: Yes, your Honor.

THE COURT: I have that as well. I believe that is a large package. I have not read them, but I did contemplate at an earlier time that we would get together and at least have some input as to scheduling, and it is precisely for that reason that there will be different takes on this, and I understand there are constitutional questions that are at stake with regard to separation of powers, there is a statutory construction issue, as well as the jurisdiction involving the jurisdiction of the Superior Court, and that, of course, is reviewable de novo in the Supreme Court.

As far as expedience, what is the best way to proceed today, Mr. Lyons, because there are a great deal of municipal defendants that have appeared here. What would you suggest?

MR. LYONS: Your Honor, the first thing is we have

reached an agreement with the North Providence defendants on the entry of a consent order, and it is substantially similar to the Woonsocket consent order you entered already, and I believe North Providence would like to have their consent order heard and entered so that they will avoid the subsequent discussion on scheduling.

THE COURT: Thank you very much. In that case, we'll proceed with that. Mr. McAllister, you're here on this particular issue alone?

MR. McALLISTER: Your Honor, I have the original consent order, if the Court would like to examine that while I briefly summarize what the proposal is.

As Mr. Lyons indicated, the purpose of this is to dismiss without prejudice the North Providence defendants from the case which includes the town and the superintendent. Just for the Court's information, the three named plaintiffs from North Providence are either no longer in the school system or have graduated from the truancy program, so there is also a mootness quality to this as well.

Basically, your Honor, the consent agreement, which we've worked out in quite lengthy discussions, if approved by the Court, would withdraw North Providence from participating in the truancy program, and we, the North Providence defendants, would take all reasonable

steps to have any pending cases in the truancy program dismissed. There is a provision in there about conditions for notice and service of any future waywardness, petitions that might be necessary that would be filed with the Family Court, not the truancy program. And, as I indicated, if the Court approves this, a dismissal would be without prejudice with no award of attorney's fees or costs to the plaintiffs.

THE COURT: And, let me ask you, Mr. McAllister, has the Town of North Providence and the various committees, the school committee, as well as the school counsel, have they weighed in on this particular matter?

MR. McALLISTER: Yes, your Honor. Specifically, on May 26th the school committee approved our joining this consent order to dismiss the cases. With regard to the Town, we have the authorization of the mayor, and his town solicitor has allowed his signature to this consent order as well. Under the town charter, since this is not a claim for money damages, it would be an administrative function on the part of the mayor to execute on behalf of the town defendant. So, we've got authorization from both the school side and the town side for this which should certainly be a belt and suspenders on this.

THE COURT: The order that you presented clearly reflects your firm, Mr. McAllister, as well as

Mr. Gallone, who is the solicitor of North Providence. And, there is a resolution from the school committee, I take it?

MR. McALLISTER: Yes, your Honor.

MR. LYONS: Your Honor, we've been provided by a letter signed by Mayor Lombardi indicating that he has reviewed the order and has approved it. Just for clarification's sake, although we don't necessarily agree that there is a mootness aspect to this, we spoke to Mr. McAllister today, and in light of some developments regarding the Woonsocket consent order, we have agreed that it is our understanding that the North Providence defendants would not be voluntarily assisting in any further prosecution of Truancy Court matters, such as, for example, by voluntary serving notices or summonses or providing information.

THE COURT: Is that reflected here in the written order?

MR. LYONS: It is not reflected in that order, your Honor.

THE COURT: Is that your understanding, Mr. McAllister?

MR. MAC: Yes, your Honor. I think one could reasonably infer it from the order, but we're going to take all steps necessary, unless we're ordered by the

Family Court, to serve future petitions, we have no intention to do that.

THE COURT: Is that something either one of you gentlemen would like reflected in the order?

MR. MAC: I don't think it is necessary.

MR. LYONS: We have the transcript, your Honor.

THE COURT: The transcript is fine with everyone. In that case, I'm inclined to grant the order, and I'll sign it at this point in time. I'll give it to our clerk. Actually, I'm signing the consent judgment at this particular point in time.

Is there anything else we need to address on the record with regard to this particular component of the action at this time, Mr. Lyons?

MR. LYONS: No, thank you, your Honor.

THE COURT: Mr. McAllister.

MR. MAC: No, thank you.

THE COURT: You're welcome. Mr. Lyons, that much being out of the way, let me ask everyone here, is there anyone who has not filed an answer in the case as of this point in time? All right. Mr. Rotella, Mr. Anderson, and I have--is it Miss McSweeney?

MS. McSWEENEY: McSweeney, yes.

THE COURT: And Mr. Turano?

MR. TURANO: Yes, your Honor.

MR. LYONS: With respect to all of the remaining municipal defendants, we are in some stage of discussion, your Honor, about similar resolutions, and as a result we have agreed to provide them additional extensions of time to file.

THE COURT: What would you say, just one week?

MR. LYONS: It actually varies somewhat. I think the longest one is for the Westerly defendants, which is to the 22nd, that would be over two weeks, but I think the other ones are within a week, your Honor.

THE COURT: June 22nd. That's fine with the Court with regard to those types of extensions. What I will do is--I'm not sure if the issues that are applicable to the administrators and the magistrate and the chief judge are going to be applicable to the municipal defendants, but, certainly, what I am going to do is at least contemplate and get underway with some kind of a discussion as to the scheduling order at this time, and if you attorneys would like to stay and at least listen to what is going on, that is fine with the Court. If you have other commitments for your own time today, I will excuse you. Do you know what your preference is here at this particular time?

MR. TURANO: We would be excused, your Honor.

THE COURT: I am inclined to excuse you. I

understand that there are all kinds of time commitments, and it seems like there is never enough time.

Mr. Rotella: I'll stay for the discussion.

THE COURT: Mr. Anderson.

MR. ANDERSON: I would like to stay.

THE COURT: I will excuse Miss McSweeney and Mr. Turano.

MS. McSWEENEY: I would like to stay.

THE COURT: I will leave it to you to make the best use of your time. Mr. McAllister, you are excused.

At the outset, Mr. Lyons, we are next addressing at least a scheduling, the prospect of a scheduling order. Is that the next best thing to?

MR. LYONS: I believe so, your Honor. I know we had circulated a form of an order, but in light of some recent events we're actually prepared to propose some modifications to what we had circulated if that is agreeable to the Court.

THE COURT: What I do want to say at the outset is that based upon the very timely submissions from the attorney general's office, as well as Mr. Lyons, I did have an opportunity to look at least the different prospects at this particular point in time. I am certainly familiar with the enormity of the constitutional and the statutory construction prospects

that lie ahead in this particular matter, and although I have not opened memorandums from either the attorney general or Mr. Olenn's law firm, I am familiar with the statutory construction, and I know there is going to be an issue here. That is one of the reasons why I had at least contemplated all of us getting together to try to work out a scheduling order so we can create some deadlines and be able to take these particular components into consideration.

Without committing anything, I'm interested at the outset in the most efficient use of everyone's resources, and I understand certainly the attorney general has attorneys here every single day here in the Leitch Courthouse, and I know, Mr. Olenn, you are in line with the attorney general with regard to this issue--although I haven't looked at the separate memo at this particular point in time, I think that I'm concerned with the plaintiff's resources and creating the, at least, the need to come back on maybe even a regular or daily basis for the plaintiff in this particular matter, and as I thought about this over the weekend, I said, gee, I believe it does make sense, given that no answer has been filed, to at least address the prospect of dismissal in lieu of an answer and allow memorandums, responses, allow everyone to address the issue to amplify whatever

arguments they put forth by way of a memorandum on the record and then the Court contemplates taking that under advisement. I find the issue is fascinating and I will be issuing a written decision at the end of that component of the case. I understand that this will be reviewable de novo in the Supreme Court. Is anyone at this point in time suggesting the need for an evidentiary hearing to resolve any of these issues? Mr. Lee, you're shaking your head in the negative; is that correct?

MR. LEE: Your Honor, that is correct. We would not suggest it, and we wouldn't even think it would be improper on the motion to dismiss. There should not be an expanded record. We move just on the basis of the complaint, and we believe the issues are clearly there.

THE COURT: Mr. Olenn, are you of the same mindset, sir?

MR. Olenn: We are, your Honor, particularly in line of what may come next. I think it is important to view what we have in writing.

THE COURT: The reason I ask that question is that I'm familiar when Judge Jeremiah had the divorce question for the same sex marriage in the Family Court, and I know this is a statutory mechanism that is available to bring these types of matters directly to the Supreme Court. I am not inclined to do that. I believe the Supreme Court

expects us to work through it here and apply certain provisions of the law. If there is an ambiguity to construe that area of the law, I am familiar with the doctrines of in para materia as well as some of the other statutory construction doctrines, as well as some of the case law in the jurisdiction with regard to that. I can assure you that I am a very serious student of that component of law. It may be most expeditious to address this first, but I did want to ask Mr. Lyons, any need for--just on this issue--an evidentiary hearing at all?

MR. LYONS: I don't see a need for an evidentiary hearing, your Honor. However, we would ask that the motion to certify the class be heard at the same time as the motions to dismiss, and that is because that motion has a direct bearing, we believe, on the merits of the motion to dismiss. If your Honor would like, I would be happy to address that briefly, but we do think that they are closely tied.

As your Honor may be aware, there is no procedure in Family Court for hearing a class action, so that this case could not proceed in Family Court as a class action. It can only proceed as a class action here or in Federal Court. And, accordingly, that would be one of the arguments that we would raise as an objection to their motion to dismiss, and we think it is important that the

motion to certify class be heard at the same time as the motion to dismiss. If your Honor is interested, I do have some case law to address on that issue.

THE COURT: I know that you will be able to supply me with the case law. This would certainly have an affect on the remaining municipal defendants who would still be in the case at that time, is that correct, Mr. Lyons?

MR. LYONS: Yes, your Honor. The City of Providence has filed an answer. They are the only municipal defendant who actually filed an answer. We hope in the next two weeks to be in a position to enter into consent orders with the other municipal defendants, and the City of Providence has indicated some interest in doing something similar, though we have not initiated discussions with them.

In recognition of that, your Honor, we did have some different dates for filing some issues other than those we had originally proposed.

THE COURT: Would you agree that probably the most expedient way to proceed, Mr. Lyons, would be to address the issue of dismissal, and then I would like to hear from--well, if the Court were to consider, Mr. Lyons, a motion to dismiss in lieu of an answer based upon the constitutionality and statutory construction issues--and

I know you just indicated you would like to hear motions to certify class at the same time, sir--in your opinion would that be the most expedient way to proceed, keeping aside the precise dates for a minute?

MR. LYONS: Yes.

THE COURT: All right. Let me hear from--I know I have Mr. Lee, Mr. Olenn here as well as Miss Sacks and Miss Tucker from the City of Providence that are available. Mr. Lee, do you want to be heard first?

MR. LEE: I do, your Honor. As much disagreement as there will be between the plaintiff and the defendant, I think one thing we agree on, we would like to get a valid ruling from this Court. If this Court does not have valid jurisdiction, and we contend it does not, then we are not going to get a valid ruling. It makes no sense to have everyone brief that issue, spend the time and money fighting that issue, and then have the Court agree with us that there is no jurisdiction here, and whatever the Court's ruling on the class action is, it simply becomes void.

Additionally, there is nothing about a class action certification that is going to affect our motion to dismiss. We're talking about the alleged right of the individual, the defendants, the alleged plaintiffs, and whether that is presented to the Court through a

student--their allegation is that a student did not have this done properly, or whether it is presented to a class action saying, X number of students didn't have this done properly, that issue is in the face of the complaint. The Court does not need a class action to present their allegation, for example, that service was not untimely, or their allegation that there was not a record of the proceeding. Those allegations are in the complaint and for our motion to dismiss must be accepted as true. So, certifying class would do nothing except to bring in additional people, cause a huge expenditure of time and effort by a lot of parties, including cities and towns, and possibly resulting in (inaudible). I think it is important that the Court determines its jurisdiction first. I think that is the only efficient way to go forward in this case.

THE COURT: Thank you, Mr. Lee. Mr. Olenn or Mr. Forte, do you want to be heard?

MR. FORTE: Just to address the first question, your Honor, as regarding whether an evidentiary hearing is needed. Part of our motion was filed under Rule 12(b)1, and I think it is a little premature to determine whether or not there would need to be extra facts brought into this case to prove subject matter jurisdiction. I also think, secondly, that the fact that we haven't filed an

answer, shows that we haven't determined what issues are going to be materially in dispute at this point, and I think determining which issues are agreed to and which ones are in dispute, could have a material affect on how we end up briefing the motion for class certification. So, it would appear, especially based on the fact that there is an open question as to whether this Court has subject matter jurisdiction in the first place and how that would be reviewed no matter which way the Court went on it, there would need to be a period of time left open for either consideration of appeal, review above, and then we could jump into whether or not there actually could be a stipulation of facts or whether there are going to be things that are disputed that drive to the center of plaintiff's motion.

THE COURT: Well, at least for the purposes of the motion to dismiss in lieu of an answer, no evidentiary hearing on that issue, correct?

MR. FORTE: Your Honor, we moved under 12(b)1 under 12(b)6, so there is some federal case law when you have an opportunity to review the memorandum that we wrote that would seem to indicate, depending on the basis of that motion, whether it is substantive or whether it is technical, could lead to the introduction of evidence as opposed to 12(b)6 which is going to the four corners of

the complaint.

THE COURT: Thank you very much. How about Miss Sacks or Miss Tucker with regard to hearing just the motion to dismiss or hearing that along with the motion to certify class.

MS. TUCKER: I haven't seen the copy of the motion to dismiss. I wasn't involved in the case late last week, although hearing this argument it seems to me that that would make sense.

THE COURT: With regard to the municipal defendants, do any one of you want to be heard? Mr. Anderson, in light of the fact that at least there has been a representation that it is possible that you are going to settle, would you like to be heard, sir? I know you represent the Town of Coventry.

MR. ANDERSON. The Town of Coventry joins the attorney general's position with regard to this matter, that it is premature to take up the issue of class certification while the motions to dismiss are pending.

With regard to the issues of class certification, there will be evidentiary issues in connection with those and we believe that the Court should simply limit its focus at this time to the motion to dismiss.

THE COURT: And that's the point Mr. Forte is making, is that there might necessarily be an evidentiary

issue as well, there is a 12(b)1 motion. And, Mr. Rotella, sir, you are representing Cumberland. Do you have a position to stake out which way is the most expeditious way to proceed?

MR. ROTELLA: Your Honor, we are in the process of working out a settlement. However, at this point in time I believe that it would be most expeditious for the Court to hear the motions to dismiss. What effect those will have on any of the municipal defendants will also probably need to be addressed at some point in time. However, until such time as an order is entered, I believe that the proper course at this point in time would be to address the motions to dismiss prior to any effort to get into a class action situation.

THE COURT: Thank you. Miss McSweeney, would you care to weigh in with regard to your client, the Town of Westerly, at this time?

MS. McSWEENEY: Yes, your Honor. I would echo the sentiment of the cities and towns and other defendants in this case and say that we believe that the motion to dismiss should stand by itself, that the class action should be taken up at a later date.

THE COURT: Thank you. Mr. Lyons, you have the last word, sir.

MR. LYONS: Okay. Thank you. I don't know that we

need to have an evidentiary hearing on the class certification, your Honor. What we need to do is preserve the fact that we filed this as a class action, that when we filed the complaint we simultaneously filed a motion to certify this as a class, and that we believe the fact that we have that complaint pending, we have that motion pending, has a direct bearing on the defendant's motions to dismiss and we need to preserve that issue.

THE COURT: Thank you. And, with regard to any of our pro hac vice counsel or anybody else that is here, does anybody want to be heard?

Mr. Lyons, I hadn't computed this into my thinking over the weekend, and I will agree with you, at least until I saw differently, that I don't believe that a class action would be available under our rule clearly in the confines of the Family Court. However, I do recognize how important it is, and I know that you at least offered to direct the Court's attention to specific cases that deal with how important a component of this action is, that particular component is going to be insofar as it weighs against the motion to dismiss. My inclination at the outset, and without deciding, is that I'm inclined to address the motion to dismiss at the first juncture but give Mr. Lyons leave to certainly

argue within that motion just how important the class action is and why it cannot be dismissed subject to that. Is that acceptable to the plaintiffs, Mr. Lyons, or do you need some time to discuss that prospect with counsel?

MR. LYONS: No, your Honor, that is acceptable.

THE COURT: Then, we'll enter a scheduling order today, a preliminary scheduling order. Mr. Lyons, I'll leave it to you to draft. We'll address the motion to dismiss, and we'll specifically leave you the opportunity to argue the class action component within the confines of the motion and the context, if you will, of the motion to dismiss, and we should at least contemplate some dates at this point in time, and I know that the dates are--we've got June 22nd as an outside date for at least the Westerly defendants. The Coventry and the Cumberland defendants, I know those dates are up in the air. With regard to the Providence defendants, let me ask either Miss Sacks or Miss Tucker, is this something that has a specter or potential to settle it by a consent order some time this summer, or is it something that the City of Providence feels will be in for the duration on this? And, certainly, I'll need your input on any motion. So, Miss Tucker, what is the City's position on that?

MS. TUCKER: We're going to be meeting with the school department this week, and we'll have a better

sense then. I think it is a possibility, but I don't want to commit to anything until I talk to them.

THE COURT: My sense is let's not move the timeline so fast as to preclude the opportunity of the municipal defendants to argue in a meaningful fashion.

Now, I know that the summer is going to provide a lot of time that I'll be on vacation, actually to do some reading, and I can assure all of you that I am fascinated by the issue, and since the days that I worked in the legislature, I'm familiar with the constitutional issues, the statutory framework within the context of the casino litigation that occurred the last few years here in the state and with regard to some of the other issues that have come forward since, and that this will make certainly a most enjoyable form of reading, along with some other forms of reading during the time I am on vacation. I don't mean to sound trite, but I don't want anybody to think that here is a case that will simply come out with a written decision at the end. I intend to read every single case that you've presented. I've already read the complaint. I'm aware of the precise allegations the complaint and the procedural statutes that involve the introduction, if you will, of a juvenile or a young individual into the Family Court system by way of a petition for a truancy, and some of those particular

issues that I, in my former lifetime, have actually done some of that myself. So, I know what the intake process is about. I have noted that the complaint sounds in both declaratory and injunctive relief, and I am familiar with just how important it is to make a meaningful record in any court of record in the State of Rhode Island, and, generally, there are points in time when various litigations and cases that I've been involved in, I will ask different counsel if the record is sufficient, especially if there is a plaintiff or a defendant issue and, more especially, if there is a state as well as criminal defendant types of issues, and I'll ask if the record is sufficient given what occurred that day.

So, I can put this on for status conference, Mr. Lyons, if you will, and allow at least yourself to begin in preparation of your own papers in this, and we could probably put this on for a date, I'm thinking early July, is that acceptable?

MR. LYONS: Actually, your Honor, I think we would probably be in a position to file our objection even sooner than that, and we were actually going to suggest some particular dates, and depending on your schedule and the other party's schedule, we might see how those could work out.

THE COURT: Can I hear the dates, Mr. Lyons?

MR. LYONS: We were going to suggest that in two weeks, June 21st, we would file our objection to the Family Court's defendant motions to dismiss and their motion to strike. We were going to suggest that they file their reply memo, or memos a week later on the 28th, and that we have a hearing on the motions to dismiss, motions to strike, sometime, say, the week of July 12th.

THE COURT: The week of July 12th, I'm scheduled for a vacation. Now, what I would inquire is, I'm going to look at my own schedule in July. I know I'm here during the week of July 5th, and we won't be in on that Monday. So, I'm not sure if anybody is available during that week.

MR. FORTE: If I may be heard, your Honor.

THE COURT: Yes.

MR. FORTE: The motion to dismiss, based on the date when we entered the case, we have a relatively compressed timeline to turn that around. That is not a complaint, but it just serves notice to the Court that we essentially had ten days from the date we got the amended complaint. Now, in this situation, we're looking at having a longer time to object under that scenario than we had to file and form the motion and do the research in the first place. So, if that is what the Court is going to find acceptable, we would ask for a longer period to

reply to be able to supplement based on the arguments that were made.

THE COURT: Do you have a date? I see the seven-day window here? Do you have a date you would like to suggest to reply?

MR. LEE: On behalf of the State, I would suggest that we have a three-week period to reply because there is a 4th of July holiday. I would ask for three weeks after they filed their memorandum. I also indicate if we use Mr. Lyons date of the 21st. I think the three weeks would be reasonable if the municipal defendant decided to join those objections.

THE COURT: Mr. Lyons, on the issue of that, do you want to be heard, sir?

MR. LYONS: Actually, your Honor, that is fine. They may have three weeks to file their reply.

THE COURT: And this leaves a reply due by July 12th. I'm just going to check my own schedule with regard to vacations. I'm wondering--and, actually, it is going to be very convenient for the Court because I'm on vacation the week of July 12th and July 19th, and if we get back during the week of July 26th, sometime later in that week, is that acceptable to foment some arguments that are here on the record?

MR. LYONS: Actually, your Honor, I am out of town a

good part of that week. Although, I'm back on the 30th, I'm out of town the four previous days.

THE COURT: How about the following week, Mr. Lyons?

MR. LYONS: The following week, the week of August 2nd works for us.

THE COURT: And how is that for Mr. Olenn, Mr. Forte and Mr. Lee?

MR. LYONS: Actually, I spoke too early. It would have to be early that week.

THE COURT: A Monday or a Tuesday?

MR. LEE: August 3rd would be good for us.

THE COURT: August 3rd on the record, Mr. Olenn, Mr. Forte.

MR. FORTE: Yes.

THE COURT: Now, do any of the municipal defendants have any problem with at least a preliminary scheduling at this time? Does anybody want to be heard on that? The record will reflect everybody is okay.

MS. McSWEENEY: Your Honor, I am a little concerned about the June 21st deadline only because, I know--I realize it is for you, but on the other hand, if we have not yet come to agreement, I'm concerned that we won't have even filed our motion to dismiss because we don't have to until the 22nd, and, therefore, your reply would not include whatever we have to say. I would be willing

to let it go forward.

THE COURT: Miss McSweeney, let me try to cover that base for you. Mr. Lyons, you referred to this as a preliminary scheduling order. The word preliminary would have the meaning that there are municipal defendants that may need some time to weigh in, and if this is possible, could move this case forward and as expediently. We are fixing a date on this schedule as early as August 3rd for argument on the record, and I would contemplate at this time that if a municipal defendant or an attorney had either further research or an investigation or there was another good reason for sending the schedule back, then I believe that given the gravity of the case before the Court, that this is the type of thing that we should make adjustments for. Is that acceptable to at least allay any fear that you may have at this time, Miss McSweeney?

MS. McSWEENEY: Yes, it does, your Honor.

THE COURT: In that case, Mr. Lyons, (one) it is a preliminary scheduling order and (two) the dates which are the June 21st, July 12th and the August 3rd would refer to the state court defendants, which are the administrators, the chief judge and the magistrates, and if the order reflects that, however you want to couch that contingency, that the municipal defendants, with regard to that, is acceptable to the Court. If the

municipal defendants are able to comply, it would be appreciated. If not, then perhaps more time is due, and I don't think it would be fair to go forward if there was a municipal defendant that was still in the case, so to speak, and not in a position to make an argument or at least adopt some of somebody else's pleading, you may have to examine your own charters, your own municipalities in this regard to see if there is something that is important to bring to the Court's attention. Are you in a position to draft an order on that, Mr. Lyons?

MR. LYONS: Yes, your Honor. I will circulate that before it is submitted to make sure that the language is acceptable to all counsel.

THE COURT: I'm thinking that perhaps August 3rd, we should at least contemplate--and you don't have to put this in the order--but we contemplate what the next steps are, if there is another scheduling order that is needed. I know my intent, I'll let you know this upfront, would be to reserve decision and begin to move through your briefs and to actually begin the fashioning of a written decision of the Court that addresses what the merits of the arguments are that come to fruition on August 3rd that have been developed through your briefs and your memorandums of law, and then we can set, perhaps, a

status date or at least contemplate what the future should hold by way of a schedule. To say anything about any other matter at this time may well be premature given all the contingencies that could develop. I can assure everybody that is here in the courtroom, I have no opinion one way or the other how this would, in fact, work out, and I'm kind of eager to read everybody's memorandums on it, and I intend to begin the reading of Mr. Olenn's and Mr. Lee's, perhaps as early as tonight, and I'll be looking forward to any other submissions.

Mr. Lyons, you can submit this order at your convenience. If you can get it directly to Courtroom 10 if there is a mailing, and if you have somebody that is here in the courthouse, I will leave it to you to bring it to Mrs. Porazzo to enter it. Is there anything else that we need to address?

MR. LYONS: Just so we're clear, we also have a pending motion for a preliminary injunction, and we would take up the possible scheduling with respect to that on August 3rd? Is that what your Honor is contemplating at this time.

THE COURT: I'm not given-- I'm not sure what the emergency nature is. With regard to preliminary injunctions, generally they do involve an evidentiary hearing. Is there any need for a TRO?

MR. LYONS: We're not seeking a TRO, your Honor, and as presently drafted we believe the motion for a preliminary injunction is purely legal as presently drafted, although it may get revised or supplemented, we don't anticipate needing to have an evidentiary hearing.

THE COURT: I think maybe we can contemplate that on August 3rd, and that should be a topic that we discuss at that particular point in time. Is there anybody else that would like to be heard on that? I know that with regard to that issue, if there is not a dismissal, then certainly once the preliminary injunction hearing is undertaken and completed and there is a decision on that issue, that is subject to appeal even though these are interlocutory in nature, there is by statutory right an appeal and a courtroom that provides for just that in those types of situations.

So, other than that, Mr. Lyons, is there anything else that we need to address on the record at this time before we adjourn for the day on this case?

In that case, it has been my pleasure. Again, I apologize for my late arrival on the bench. I can assure you that I was working and there were other issues that were percolating for some time. I hope I live up to what each of you expect from the Superior Court, and please be safe until such time as we meet again.

You can present an order at your convenience, and we'll mark this order to enter on this particular issue, Mr. Lyons. The Court will be in recess.

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