

Bill as Introduced

HR 7 - AS INTRODUCED

2011 SESSION

11-0432
09/01

HOUSE RESOLUTION 7

A RESOLUTION directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

SPONSORS: Rep. Itse, Rock 9; Rep. Ingbretson, Graf 5; Rep. Baldasaro, Rock 3;
Rep. Seidel, Hills 20

COMMITTEE: Judiciary

ANALYSIS

This bill directs the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

A RESOLUTION directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

1 Whereas, during the 2010 Session of the house of representatives, the General Court of
2 New Hampshire heard a bill of address, HA3, against marital master Phillip Cross for malpractice and
3 maladministration of office; and

4 Whereas, during the public hearing on 2010, HA3, numerous instances of malpractice and
5 maladministration were testified to, including but not limited to:

6 1. Holding what amounted to a criminal contempt hearing where David Johnson was incarcerated
7 indefinitely until Judge Sadler eventually reduced the fine and acknowledged that the defendant did not
8 have the means to pay even the reduced amount which had to be borrowed;

9 2. Altering court documents after they have been signed by one of the parties so as to create the
10 impression that the party had agreed to the terms, thus defrauding the court;

11 3. Holding a court hearing for a purpose other than that for which it was noticed, thus denying the
12 parties the opportunity to adequately prepare for the hearing;

13 4. Denying parties the opportunity to present evidence to clear themselves of wrong doing which
14 will result in the denial of fundamental liberties; and

15 Whereas, under Part II, Article 38 of the New Hampshire constitution, a public officer may be removed
16 by impeachment for bribery, corruption, malpractice or maladministration of office, or any combination
17 thereof; and

18 Whereas, under Part II, Articles 17 and 38 of the New Hampshire constitution, impeachments are
19 made by the house of representatives, and then heard and tried by the senate; and

20 Whereas, the conduct testified to in the public hearing of 2010, HA3 may be cause for the house of
21 representatives to find that impeachment proceedings should be initiated against marital master Phillip
22 Cross and/or any justice of the New Hampshire superior court; now, therefore, be it

23 Resolved by the House of Representatives:

24 That the house of representatives authorizes and directs the house judiciary committee, acting as a
25 whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance
26 with the rules of the house and rules which may be adopted by the committee, to investigate whether
27 grounds exist, based on the public hearing of 2010, HA3, and any information arising out of the judiciary
28 committee investigation, for the house of representatives to exercise its constitutional power to impeach
29 marital master Phillip Cross and/or any justice of the New Hampshire superior court; and

30 That the committee shall report to the house of representatives such resolutions, articles of
31 impeachment, or other recommendations as it deems proper; and

HR 7 - AS INTRODUCED

- Page 2 -

1 That for the purposes of making such an investigation, the committee is authorized to compel by
2 subpoena the attendance and giving of testimony by any person, and the committee is further
3 authorized to compel the production of such things as it deems necessary. Such testimony shall be
4 taken under oath, either in the form of interrogatory, deposition, or by oral testimony at a hearing.
5 Counsel for the committee may be authorized to ask any or all questions on behalf of the committee.
6 For purposes of this section, "things" includes, without limitation, books, records, correspondence,
7 electronic mail, logs, journals, memoranda, papers, documents, writings, reproductions, recordings,
8 tapes, transcripts, printouts, data compilations from which information can be obtained, tangible
9 objects, and other things of any kind; and

10 That such authority of the committee may be exercised by the chairman or by the committee acting as a
11 whole or by subcommittee. Subpoenas or interrogatories so authorized may be issued over the signature of
12 the chairman or any member so designated by the chairman, and may be served by any person designated
13 by the chairman.

Committee Minutes

HOUSE COMMITTEE ON JUDICIARY

FULL COMMITTEE WORK SESSION ON HR 7

BILL TITLE: directing the house judiciary committee to investigate whether grounds exist to impeach marital master Philip Cross and/or any justice of the New Hampshire superior court.

DATE: April 17, 2011

Committee Members: Reps. Rowe, Cebrowski, Souza, Hagan, Silva, Hopper, Andolina, Giuda, LaCasse, McClarren, Murphy, Palmer, Peterson, Wall, Potten, Weber and Watrous.

Comments and Recommendations:

The Committee endorsed the subcommittee's recommendations: 1) That an impeachment proceeding is not proper under HR 7 in that Marital Master Cross is not an officer under the provisions of Part II, Article 38; and; 2) That HR 7 is vague as to specific allegations against specific judges, we recommend the committee decline to take further action against un-named judges. The Committee will file a report to the full House.

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

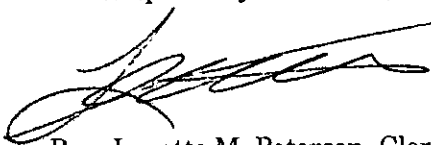
Motions:

Moved by
Seconded by
Vote:

Motions:

Moved by
Seconded by
Vote:

Respectfully submitted,



Rep. Lenette M. Peterson, Clerk

HOUSE COMMITTEE ON JUDICIARY

FULL COMMITTEE WORK SESSION ON HR 7

BILL TITLE: directing the house judiciary committee to investigate whether grounds exist to impeach marital master Philip Cross and/or any justice of the New Hampshire superior court.

DATE: April 17, 2011

Committee Members: Reps. Rowe, Cebrowski, Souza, Hagan, Silva, Hopper, Andolina, Giuda, LaCasse, McClarren, (Murphy, Palmer, Peterson, Wall, Potter, Weber, and Watrous) 14-1

Comments and Recommendations: *the 9 on large subcom. rec. #1-2*
comment # 1 file report to full house

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions:

Moved by

Seconded by

Vote:

Motions:

Moved by

Seconded by

Vote:

Respectfully submitted,

Rep. Lenette M. Peterson, Clerk

House Judiciary

2011-2012 subcommittee & full committee work sessions pursuant to HR 7 of 2011 session, directing the House Judiciary Committee to investigate whether grounds exist to impeach marital master Philip Cross and/or any justice of the New Hampshire Superior Court

JUDICIARY COMMITTEE

REPORT PURSUANT TO HR 7, 2011

MAJORITY REPORT

House Resolution 7 was passed by the House in 2011. The resolution directed the Judiciary Committee, acting as a whole or any subcommittee thereof appointed by the chairman --- to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice or the New Hampshire superior court.

Following the passage a subcommittee was formed consisting of Representatives Robert Rowe, chair, Brandon Giuda, Joseph Hagan and Lucy Weber. The subcommittee met on numerous occasions and reviewed the authority for impeachment as contained in Part II, article 38 of the New Hampshire Constitution. This article allows for the impeachment of a **public officer for bribery, corruption, malpractice or maladministration in office**. Research was conducted by the subcommittee as to impeachment practices in New Hampshire and the other 49 states. No guidance was found in other state governments. In New Hampshire, there have been two impeachments authorized by the legislature. The first occurred in 1780 when impeachment was started against Judge Woodbury Langdon for neglecting his duties. He refused to try cases. He was impeached but resigned before the Senate rendered a verdict. The second occurred in 2000. Chief Justice David Brock was impeached by the House on four counts of maladministration or malpractice, and knowingly lying under oath. He was later acquitted by the Senate.

Our Constitution requires two elements for impeachment: First is the individual must be an **officer**, and two, has the offence must be that of **bribery, corruption, malpractice or maladministration in office**.

I. The first charge in HR 7 related to grounds for the impeachment of Marital Master Philip Cross.

The subcommittee agrees that all state employees are public servants and the public has a right to view their job performance. Poor job performance deserves termination. From impeachment research, it is clear that impeachment does not apply to employees who can be terminated at will, only **officers**. Under our statutory authority, RSA 490-D, marital masters are appointed by Governor and Council for a term of 3 years; following the 3 year appointment the master may receive a renewable contract term of 5 years. This contract is at the pleasure of the judicial branch. Master Cross was appointed as a commissioned officer on September 8, 2004 for a 3 year term ending on September 8, 2007. Subsequently he received a contract appointment to serve as a marital master of the Judicial Branch for a term of 5 years. The appointment reads: *The term of this appointment will commence on September 9, 2007. The Master shall serve at the pleasure of the Administrative Judge of the Judicial Branch Family Division.* The appointment was signed by Edwin Kelly, Administrative Judge.

While the majority of the committee was deeply concerned as to the multitude of complaints against Phillip Cross and firmly believed that an investigation was in order, and should have taken place by the Administrative Judge of the Judicial Branch, it concluded that after the end of the initial three year commission by Governor and Council, Phillip Cross was an at-will employee under the supervision of the Judicial Branch and not subject to impeachment as an **officer**.

II. The second charge established under HR 7 was to investigate the actions of any justice of the superior court.

Since Philip Cross received his three year appointment by the Governor and Council there have been at least 20 superior court sitting judges. The resolution names no specific judge. Further the superior court has not been involved with Philip Cross or marital masters since the formation of the Family Court. The committee felt that the vagueness of the charge and the lack of direction would result in a fruitless and costly investigation. While there may be fault in the management of marital masters within the Judicial Branch, it is not with superior court judges and the committee must follow the clear direction contained within HR 7, and not second guess the legislature.

As a result of the above the committee recommends that no further action be taken under the authority of HR 7. **Vote 14-1.**

Rep. Robert H. Rowe for the Majority of the Judiciary Committee

MINORITY REPORT

In 2010, an attempt was made to have Marital Master Philip Cross removed from his position with HA3. The removal was tried again with HR7 in 2011. In both cases people have come to the NH General Court in an attempt to remedy their grievances with Master Cross. In both cases, there have been technical issues that have prevented the House from hearing the extent of the problems or any defense by Master Cross of allegations.

The current technical issues are that Master Cross is not an officer of the court and therefore can't be impeached and his supervising judges can't be held to task because in HR7 a Superior Court Judge was specified in the resolution; however the supervising judge is a Circuit Court Judge.

So, the majority of Judiciary Committee is correct, technically, but from the minority's view the right thing to do is what was intended by HR7. We should pursue impeachment proceedings against the supervising judge on grounds of maladministration.

This reminds us of the words of Alexander Solzhenitsyn, who said, "I have spent all my life under a communist regime and I will tell you that a society without any objective legal scale is a terrible one indeed. But a society with no other scale but the legal one is not quite worthy of man either. A society which is based on the letter of the law and never reaches any higher is taking very scarce advantage of the high level of human possibilities. The letter of the law is too cold and formal to have a beneficial influence on society. Whenever the tissue of life is woven of legalistic relations, there is an atmosphere of moral mediocrity, paralyzing man's noblest impulses."

Rep. Gary Hopper for the Minority of the Judiciary Committee

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HOUSE RESOLUTION 7

BILL TITLE: directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

DATE: February 22, 2011

LOB ROOM: 208 **Time Public Hearing Called to Order:** 4:00 pm

Time Adjourned: 4:45 pm

(please circle if present)

Committee Members: Reps. Rowe, Sorg, Souza, Hagan, Silva, Andolina, Giuda, LaCasse, McClarren, Murphy, Palmer, Peterson, Tregenza, Wheaton, Walk, Potter, Weber and Watrous.

Bill Sponsors: Rep. Itse, Rock 9; Rep. Ingretson, Graf 5; Rep. Baldasaro, Roc 3; Rep. Seidel, Hills 20

Rep. Itse, sponsor, introduced the bill.

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Itse: Impeachment is for malpractice in office. Bill of Address is for outside of office. Master Cross's complaints are in office, thus impeachment. Man put in jail, instead of paying fine for contempt, could not afford the fine. Had instances of information given that were false. Child support guidelines not followed by the law. Parenting plan and financial plan were altered. Financial affidavit was rejected without cause; conflicting orders were issued, followed, and then held in contempt. Denial of due process/altering of documents, petition for divorce was changed to irreconcilable differences. Complaints have led to action of Bill of Impeachment.

***David Miner, Lee, NH – opposes**
Has been in Master Cross's court twelve (12) times.

***Alan Cronheim, Attorney, Portsmouth, NH - opposes**
1) David Johnson was not Master Cross's decision. Judge McHugh said contempt stands. Master Cross's review was held up to the Supreme Court. 2, 3, 4 deals with Bill of Address: saw the trouble as "party line vote", not the facts. Mr. Puiia's files are all sealed, cannot defend there. One litigant wanted to enter an Ombudsman's report. He took last page, was instructed not to use it. Bill of Address: The child went out of the country and came back. Made the decision for the child to see father's family.

***Mr. Joseph Puiia, Jr., Middleton, NH – supports**
An appeal is pending on his son's case. Have personal testimony which is his written testimony.

Atty. Mark Moeller, Dover, NH – opposes
No information that dealt with this case.

Pamela Ambrose, Moultonborough, NH – supports

Involved in the Puiia case. Assumed there was a basis of rights to be followed. February 9 docketed as financial hearing. When they arrived it was changed to grandparents' rights instead. Her testimony is the same as Mr. Puiia's written testimony.

Judge Edwin W. Kelly, Judicial Branch, Family Division – opposes

The committee needs to set a standard before you recommend "impeachment." Urges the committee, very least find consistently that the facts only will be the base and are they supported by the Constitution. If the facts are not supported by the Constitution, no impeachment. 1) Contempt of court (Mr. Johnson), three different people in the Judicial Branch affirmed Master Cross. 2) Defraud the court – how does the court defraud itself? 3) Master Cross changed orders. Judges do change orders. 4) Non-specific allegations are vague and unclear, four instances out of about 4,000. Judge/Marital Master determines what is appropriate and important to a case. Can say no to evidence, witnesses. Consider this first step of the process and set the standards and follow the facts.

***Michael Puiia, Stratham, NH - supports**

Only submitted written testimony.

Chuck Douglas, opposes

Doesn't know Cross, read the case. Sees nothing that would lead to impeachment of Cross. Limit decision to the Constitution only.

David Greene, Esq., Dover, NH – opposes

1) System conflicts change all the time. 2) Cost of impeachment, state can't afford it. Marital Masters won't want to sit due to fear of litigation; and finally, 3) Marital Masters won't get things perfect, but they work within the boundaries.

Marilyn McNamara, New Hampshire Bar Association – opposes

What is good and important to New Hampshire? Apply the law to the facts, judge makes decision on this. 1) Master Cross could not send someone and jail; 2) Marital Masters and Judges alter documents all the time.

Patty Blanchette, Portsmouth, NH – opposes

Findings of fact were not made. If this happens, you appeal to the Supreme Court. If Master Cross should be impeached, the Supreme Court would also have to be impeached. They are his supervisors. Parenting plans are changed all the time. It's their right, responsibility and duty. Courts can reject a financial affidavit. They can change the affidavit. It can be handwritten, nothing wrong with that. Divorce ground can be changed at a drop of a hat.

John Algreen, Esq., - opposes No testimony given.

David Gravina, Hampton, NH – opposes No testimony given.

***Robert Coleman, Hampton, NH – supports**

Has appeared before Marital Master Cross. No cause of bribery or corruption. Had daily contact with children after divorce cut time. Wanted to enter testimony; was cut off and wasn't allowed to speak. Child support was set above salary. Bogus salary form was submitted, wouldn't make adjustment.

Paula DeSaulnier, Portsmouth, NH – opposes

Lawyers get opinions every day that they don't agree with Marital Master Cross, but not grounds for impeachment. Point was for child support, parenting Plan, You don't see the order, rationale, and witness's file is sealed. You can't see the evidence. If the Marital Master changes the orders, it is his job.

*Celeste Christo, Esq., Portsmouth, NH - opposes Written testimony only.

Nina C. Gardner, Judicial Council – information only

Files are sealed. Can't say if evidence can be seen. Cannot make decisions as to who can see the records. Need all material to proceed. Cost to the system and cost to the State.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lenette M. Peterson", with a long horizontal flourish extending to the right.

Rep. Lenette M. Peterson, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HOUSE RESOLUTION 7

BILL TITLE: directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

DATE: 2-22-11

LOB ROOM: 208

Time Public Hearing Called to Order: 4 PM

Time Adjourned: {Time}

(please circle if present)

Committee Members: Reps. Rowe, Sore, Souza, Hagan, Silya, Andoline, Gruda, LaCasse, McClarron, Murphy, Palmer, Peterson, Tregenza, Wheaton, Wall, Rotier, Weber and Watrous.

Bill Sponsors: Rep. Itse, Rock 9; Rep. Ingretson, Graf 5; Rep. Baldasaro, Roc 3; Rep. Seidel, Hills 20

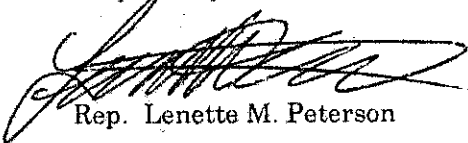
TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Itse - impeachment is for mal. in office, Bill of Address is for outside of office

Master Cross' complaints are in office, thus 'impeachment' manipulation jail, instead of paying fine for contempt, could not afford the fine. had instances of information given that was false. Child support guidelines not followed by law. Parenting plan + financial plan were altered. Financial Affidavit was rejected w/o cause. conflicting orders were issued, followed, then held in contempt.

Respectfully Submitted,


Rep. Lenette M. Peterson

Denial of do process / altering of documents
Petition for divorce was changed to irrecog. differ.
Complaints have lead to action of Bill of Impeachment.

*David Miner - (O) has been in Master Cross' court 12 times.

Alan Cronheim (O) - Represents Master Cross:

① David Johnson - was not Master Cross decision, Judge
McGue said contempt stands - Master Cross' review
was held up to the Sup. Court.

2, 3, 4 - deals w/ Bill of Address: saw the trouble is "party line vote"
not the facts.

Mr. Poulter's files are all sealed, can not defend these.

One litigant wanted to enter an Ombudsman report, he took
last page, was instructed not to use it.

Bill of Address: The child went out of country & came back. Made
the decision for the child to see father's family.

*Mr. Puiin - (S) an appeal is pending on his son's case. Gave
personal testimony which is his written testimony

Mark Moeller - (O) no info that dealt w/ this case
Attorney in Dover

Penelope Ambrose - (S) involved in The Putin Case. Assumed there
was a bases of rights to be followed. 2/9 docketed as financial
hearing, when they arrived it was changed to grand parents
rights instead. Her testimony is the same as Mr. Puiin's written
testimony.

Edwin Kelly - (O) The committee needs to set a standard before you
recommend "impeachment". Urges the committee
very least find consciencely that the facts only
will be the base and are they supported by
the Constitution. If the facts ~~do not~~ do
not support the Constitution, no impeachment
1. contempt of court - (Mr. Johnson) 3 different people
in Sud. Branch, affirmed Master Cross.

HR > (1)

~~XXXXXXXXXXXXXXXXXXXX~~

- 2. Defraud the court - how does court defraud itself
- 3. Master Cross - changed orders, judges do change orders
- 4. Non-specific

Allocations are vague & unclear 4 instances out of about 4,000

Judge/M.M. determines what is appropriate & important to a case. Can say no to evidence, witnesses. Consider this first step of the process & set the standards and follow the facts.

* Michael Puzia (S) - only submitted written testimony

Chuck Douglas (O) Doesn't know Cross, read the case sees nothing that would lead to impeach Cross. limit decision to Constitution only.

David Green (O) 1. system conflicts - change all the time

2. cost of impeachment - state can't afford it. M.M. won't want to sit due to fear of litigation

3. finality - M.M. won't get things perfect, but they work within boundaries

NH. Bar Assoc.

Marilyn McNamara - what is good & important to NH.

Apply the law to the facts, judge makes decision on this. ^o Master Cross could not send someone to jail

^o M.M. & Judges alter documents all the time

~~John~~

Patty Blanchette (O) ^o findings of fact were not made - if this happens, you appeal to Sup. Court. If Master Cross should be impeached, the Sup. Court would also have to be impeached. They are his supervisors.

(2) HR7

parenting plans are changed all the time. It's their right, responsibility & duty.

Court can reject a financial affidavit. They can change the affidavit. It can be handwritten, as long as it's not wrong with that.

⊙ Divorce grounds can be changed at discretion of M.M.

John Algreer - (o) no testimony

David Gravina (o) " "

* Robert Coleman (s) - has appeared before M.M. Cross

No ~~for~~ cause of bribery or corruption.

- had daily contact w/ children, after divorce cut time

- wanted to enter testimony - was cut off & wasn't allowed to speak

- ~~didn't set~~ ^{home} ~~at~~ ~~time~~ ~~in~~ child support was set above salary

- bogus salary form was submitted, wouldn't make a adjustment

* Paula DeSaulnier - (o) (Pulia v Miner) lawyers get opinions every day that they don't agree with M.M. Cross, but not grounds for impeachment. Point ⊙ was for child support → Parenting Plan - you don't see the order, rational, witnesses file is sealed. You can't see the evidence. If the M.M. changes the orders, it's his job.

* Celeste Christo - (o) written testimony only

Nina Gardner - (info) files are sealed, can't say if evidence can be seen. Can not make decisions w/o seeing the records. Need all material to proceed.

Cost to the system & cost to the State

malpractice
na admin.

Sub-Committee Minutes

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HR 7

BILL TITLE: directing the house judiciary committee to investigate whether grounds exist to impeach marital master Philip Cross and/or any justice of the New Hampshire superior court.

DATE: November 29, 2011

Subcommittee Members: Reps. ~~Rowe~~, ~~Giuda~~, Palmer, (appointed for Hagan) and ~~Weber~~.

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: That we recommend to the full committee that an impeachment proceeding is not proper under HR 7 in that Marital Master Cross is not an officer under the provisions of Part II, Article 38.

Moved by Rep. Palmer

Seconded by Rep. Weber

Vote: 3-1

Motions: Because HR 7 is vague as to specific allegations against specific judges, we recommend the committee decline to take further action against un-named judges.

Moved by Rep. Giuda

Seconded by Rep. Palmer

Vote: 4-0

Respectfully submitted,



Rep. Lucy M. Weber
Subcommittee Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HR 7

BILL TITLE: directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

DATE: November 29, 2011

Subcommittee Members: Reps.

Comments and Recommendations:

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. *Lucy Weber*
Subcommittee Chairman/Clerk

*Palmer/Weber
moved.*

*impeachment proceeding
not proper under HR 7
in that Marital
Master ^{Cross} is not an
officer under the
provisions of Part
II Art. 38.*

Vote = 3 to 1

*To be returned to the committee
1. ~~Master Cross is~~*

HR 7 Subcommittee Minutes—29 November 2011.

The subcommittee meeting was opened at 1:05 pm. Present were Chairman Rowe, and Reps. Guida, Palmer (for Rep. Hagan) and Weber.

Ch. Rowe: We have an extremely good judicial branch compared to years ago and compared to that of other states. This process would not have taken place but for the failure of the judicial branch. Never heard so many complaints, and not just difficult cases. Disappointed that after the bill of address last term; the judicial branch did not investigate or do a performance review. They should have. The separation of powers is not absolute. This is a failure of the judicial branch. Impeachment is extreme and rare, for those who cannot be terminated from their positions in other ways. Not applicable to at-will employees. Impeachment is an important tool for the impeachment of officers appointed for a set term of years, and for judges appointed for life. Believes the circumstances here appalling and warrant full and complete airing, but will look at the question narrowly. Will vote that a marital master is not an officer.

Rep Guida: Question is whether master is an officer. If there is a problem in the first three years, how is the master removed? Can he be removed for cause?

Ch. Rowe: There is no written contract after the commission. They are at-will employees, No marital master has been removed.

Atty Zibel: Family Division Rule 11 provides for reappointment by the judicial branch for a five year term. A copy of Master Cross's commission was provided for the Bill of Address last year.

Ch. Rowe: Master Cross is an at-will employee, and can be dismissed. He had a commission from 2004-2007, then a 5 year term ending in September of 2012. The administrative judge makes the decision. Good faith applies.

Rep. Palmer: The judicial branch has failed as to oversight. This issue should have been handled within the system. An at-will employee is not an officer and can be discharged. This one should have been forced to resign. There have been only two impeachments of judges in two hundred years. He would recommend the procedure is not applicable.

Ch. Rowe: Marital masters judge more than money issues. Custody, property, retirement, all make the job impossible. In marital cases, both sides are unhappy. These are difficult decisions. If one side complains the other may be pleased.

Rep Weber: Different perspective. Listened carefully to all the testimony in HA 3 last year. As to every single allegation of wrongdoing on the part of Master Cross as to which the committee had documentary evidence, the allegation was proved to be simply false. Just asserting that something was done improperly does not make it true. In the HA 3 proceeding, there was no allegation of wrongdoing that could be backed up, and sometimes the facts were far different than what those complaining of Master Cross's decisions said they were. These cases in HA3 are among the most difficult and contentious in the state. Decisions have been appealed and upheld. Not only is Master Cross not an officer subject to impeachment, no credible evidence he has done anything wrong.

Rep. Guida: Has seen things not just attributable to being in the family division. There is bias and unequal treatment. Just as disappointed in landlord-tenant cases. Violation of constitutional rights. The distinction of whether one is a commissioned officer is expressed in the commission. Was he a commissioned officer for three years? Would like to see the commission and any subsequent documents.

Ch. Rowe asked for a motion on whether Marital Master Cross was a commissioned officer. It was moved by Rep. Palmer and seconded by Rep. Weber that in regards to HR 7 Marital Master Cross is not a commissioned officer. The vote was 3-1 in favor of the motion. Rep. Guida dissented because he wants to see the commission.

(Note: Mr. Cianci retrieved the commission from the HA3 file and provided copies to the subcommittee several days after this meeting.)

Ch. Rowe asked for a motion with regard to the wording and/or any other judge of the superior court. He noted that the superior court no longer has jurisdiction over the marital masters, which are part of the family division.

Rep. Guida said that it was not for the committee to do the homework of those drafting the resolution. The petition is insufficient and cannot be amended.

Rep. Guida moved that because HR 7 is vague as to specific allegations against specific judges, the subcommittee recommends that the judiciary committee decline to take further action against unnamed judges. Rep. Palmer seconded the motion, which passed by a vote of 4-0.

The subcommittee adjourned at 1:55 pm.

Respectfully submitted,

Rep. Lucy Weber

Opened 1:05
Adj 1:50

Present: Rax, Guida, Palmer (appointed for Hagan) Weber.
2 motions:

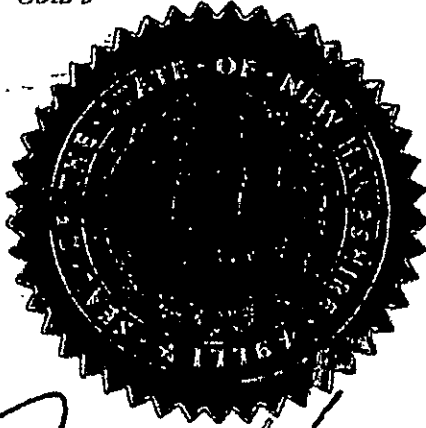
1) Moved by Palmer, 2nd by Weber
That we recommend to the full Committee that an
impeachment proceeding is not proper under HR7
in that Maritzel Master Cross is not an officer
under the provisions of Part II Article 35.
Vote 3-1

2) Because HR7 is vague as to specific
allegations against specific judges, we
recommend the committee ~~to~~ decline to
take further action against unnamed
judges
moved by Guida, 2nd by Palmer
4-0

The State of New Hampshire

To *Philip D. Cross* Esquire, Greeting:

Know you, That we, reposing special trust and confidence in your Fidelity and Ability, have constituted and appointed you Marital Master, New Hampshire Superior Court



Whereby giving and granting unto you the said Philip D. Cross all the power and authority given and granted by the Constitution and Laws of our State to Marital Master, New Hampshire Superior Court

To have and to hold the said Office With all the powers and immunities to the same to serve for a term ending September 8, 2007

Craig Benson
Governor

In Testimony Whereof, We have caused our seal to be hereunto affixed.

Witness, Craig Benson, Governor of our State at Concord, this eighth day of September in the year of Our Lord two thousand and four and of the Independence of the United States of America the two hundred and twenty-ninth.

By His Excellency the Governor, with the advice of the Council

.....*Wm. E. ...*..... Secretary of State

The State of New Hampshire

MERRIMACK.....s.s.

O.C.T.1,.....2004

Then the said Philip D. Cross took and subscribed the oath of office as Marital Master, New Hampshire Superior Court as prescribed by law.

Before us,

Willy Agnew Justices of the Peace
or
Ruth M. ... Notaries Public

Appointment

Pursuant to the provisions of RSA 490-D: 7, Philip D. Cross, Esq. is hereby appointed to serve as a Marital Master of the Judicial Branch Family Division for a term of 5 years.

The term of this appointment will commence on September 9, 2007. The Master shall serve at the pleasure of the Administrative Judge of the Judicial Branch Family Division.

Dated: July 19, 2007



Edwin W. Kelly, Administrative Judge
State of New Hampshire
Judicial Branch Family Division

HR 7—Minutes—1 November, 2011

The subcommittee meeting was opened at 10:03 am. Present were Representatives Rowe, Hagan, Weber and Palmer for Rep. Guida, who arrived shortly after the beginning of the proceedings. Ch. Rowe handed out two documents, Handout #1 being the Subcommittee Agenda, and Handout #2 being an Overview of the Impeachment process and Judiciary Committee Obligation Under HR 7, authored by Ch. Rowe. Ch. Rowe then gave an opening overview statement that closely tracked the contents of Handout #2. After the overview, Ch. Rowe recognized the following persons for testimony:

1. Karen Wadsworth, House Clerk. Some of what Ms. Wadsworth would have said was already covered in the overview and Handout #2. The language of HR 7 says that the Judiciary committee will investigate based on information from the 2010 public hearing on HA 3 and on further investigation. HA 3, which was defeated in the House in 2010 on an Ought Not to Pass vote of 187-155 will have to be revisited in order to decide what to do. The HA 3 information has been archived at Fruit Street. Further investigation has been delegated to this subcommittee to report with such recommendations as may deem proper. No appropriation has been made for the investigation. The Chair, the full committee or a subcommittee may act. The Chair has chosen to make use of a subcommittee. HR 7 is based on HA 3 from 2010. The sponsors are nearly identical. In 2010, a Joint Legislative Committee on Address, made up of an equal number of Democrats and Republicans, recommended Ought Not to Pass. The clerk has never seen a resolution to investigate. As such, it is a sense of the House, not a law.

Ch. Rowe: If Master Cross is an officer, and we decide to go forward, and need money to proceed, what steps are taken then? A: That would be another report or recommendation to the House. It could not be a simple resolution, but rather a joint or possibly concurrent resolution.

Rep. Hagan: Would the Governor would have to sign an expense authorization? A: Not clear. Rep. Hagan: Would like an answer, because would be appropriating taxpayer money. Given the time frame, and the arduous nature of the process, what happens if the process is not finished by the end of 2012, would the question become moot? A: This legislature would not be here any more, and HR 7 would be of no further effect. Joint resolutions may provide supplemental appropriations but may not extend beyond the second year of the legislature.

Ch. Rowe noted the Brock impeachment was relatively simple, yet it took an extraordinary amount of time. Care must be taken not to turn into a kangaroo court or a witch hunt. There is also a concern about drawing criticism from other states. The Clerk said she would do everything she could regarding scheduling, bearing in mind that calendars are being published every two weeks now.

2. Attorney Edward Mosca, House Council. Impeachment is set out in the New Hampshire Constitution. In Part II, Article 38 and Part II, Article 17. Part II Article 38 is the Senate role on impeachment. The House has first to look at the substantive standard. An officer can be impeached for bribery, corruption,

malpractice or maladministration in office. The House impeaches, then the Senate acts as a court. The Senate has procedural requirements, but the House sits as a grand inquest with no guidance. The phrase "bribery, corruption, malpractice or maladministration in office" acts as a screening device. Grounds for impeachment may be true, but might not amount to this standard. How to define the standard? The House may interpret the Constitution to give it meaning. Opinion is based on an original interpretation of those words. The House has delegated this power to this committee. In determining the original meaning of the words, the meaning has not changed much over time. You could check the Sheridan dictionary from the 1700s and use those definitions or look at constitutional journals. The last changes were in 1792, and no record sheds light on these provisions. You could look at prior impeachments—the Brock impeachment and the 18th century Woodbury impeachment for not showing up to work. Woodbury resigned before the impeachment process was completed. The Brock impeachment had less precedential value as it was recent, and so shed no light on the original intent.

What can the House do and not do? The system is based on separation of powers and checks and balances. Other branches play no role in the process. The NH supreme court disagrees. Dispute re the judiciary committee's taking of depositions. The JCC wanted to participate. The judiciary committee argued they had no role in impeachment. The supreme court disagreed, but incorporated the principle of justiciability. This was a political decision—how the House conducts its business is its business. Unusual dicta implied impeachment based on a coin toss or summary determination that the person was just a bad guy. There are two points here. 1. There could be some pushback from the judiciary. 2. The House has its own ability to determine its interpretation of the constitution.

No research re what a grand inquest means. In In re JCC, the supreme court did not discuss the term "grand inquest." The conclusion is that impeachment is the House's exclusive province. There could be an issue of conflict over subpoenas. But that is pretty hypothetical.

Ch. Rowe: Please provide any information re work "officer." A: 155 NH 524, case at the request of the Senate in 2007. Believes there are 3 decisions about whether marital masters are judicial officers. Impeachment talks about "officers." Article 73 address refers to "commissioned officers", not "officers." The two may mean different things. The supreme court said masters are not judicial officers. There are other masters who also make recommendations. Not prepared to say if a marital master is an officer. The statute says they are not intended to be a judicial officer but rather an employee of the judicial branch. Reappointment is based on family court rules. They serve at the will of the judiciary, and may be dismissed.

There is a case about the DRA and the business profits tax and service at the will of the commissioner was not dispositive and not summarily discharged. Read RSA 490, the marital master statute. You could argue that because the position is statutorily created it would allow one to assume that the impeachment process could be used.

Ch Rowe: Under impeachment, the legislature can only remove Master Cross from the job, it cannot order retrial of any case or correct any other matter, as that would step over the separation of powers? A; Yes, agrees entirely.

Rep Weber: Cite to DRA case? A: Will provide it.

A discussion followed as to next steps.

Ch Rowe: Is MM Cross an officer?

Cross has a 2004 appointment by the Governor and Council for five years, then became a judicial branch at will employee.

Rep. Guida: Should we ask the supreme court if the constitution distinguishes between judicial officers and civil officers? Thinks masters are not judicial officers, but are they civil officers?

Rep. Weber: Opinion in 2007 that masters are not judicial officers.

Rep Hagan: If maladministration or malpractice occurred, would the proper person to impeach be the judge who signed the orders?

Ch. Rowe: No question that the judge is the judicial officer. A large number of people are aggrieved. Most point to Marital Master Cross. Is this an impeachment problem or a failure of the judicial branch to terminate? Marital masters will be eliminated at the end of their current terms. Master Cross's contract terminates on September 12, 2012.

Rep. Guida: Does removal from office by impeachment mean he loses his retirement? Ch. Rowe: Is part of state retirement plan—thinks no vesting before 10 years, and he will not have served 10 years, but there may be an issue after 2 years.

Rep. Hagan: We have the Johnson case and the Puiia case? Ch. Rowe: We may add others.

Rep Palmer: If we do not find out if he is an officer first, are we spinning our wheels to go further? Ch. Rowe: Yes.

Rep Weber: Concern that must determine if officer first. Despite the contentiousness of the cases involved in HA3, she did not see anything that would be impeachable or anything that would be other than normal job performance.

Rep Guida: There is contentiousness here, but also the highest number of complaints. The issue is when job performance becomes impeachable. Would like the Sheridan definitions and more research and study.

The next meeting was set for November 29, at 1:00pm in Room 208.

Respectfully submitted,

Rep. Lucy Weber

State of New Hampshire

House Judiciary Committee

HR 7 Subcommittee Agenda for November 1, 2011

- | | |
|--|---|
| 1. Charge to Judiciary Committee in HR 7 | Robert Rowe
Chair |
| 2. Process and procedures for Judiciary Committee | Karen Wadsworth
House Clerk |
| 3. Overview of Impeachment law | Edward Mosca, Esq.
House Legal Counsel |
| 4. Committee and public (if necessary) information as to legal and Constitutional requirements for impeachment under NH Constitution, Part II, Art. 38 | |
| a. Who is an officer? | |
| b. What magnitude of cited violations is necessary under our Constitution? | |

OVERVIEW OF IMPEACHMENT PROCESS

AND

JUDICIARY COMMITTEE OBLIGATION UNDER HR 7

By Robert H. Rowe, Chair
House Judiciary Committee

A BACKGROUND

Impeachment is a complex and deliberative process in New Hampshire in which a state **officer** is accused of an act that warrants removal from office as well as other punishments. This authority can be found in the New Hampshire Constitution, Part II Articles 17 and 38. Impeachment should not be confused with a recall election. A recall election is usually initiated by voters and can be based on "political charges." Impeachment is instituted by a constitutional body, in New Hampshire, it is the House of Representatives, and is based on specific charges of wrongdoing. Under Part II, Article 38 of the New Hampshire Constitution, it is limited to charges that an officer of the state committed bribery, corruption, malpractice or maladministration in office. Further the accused must be an *officer*. It is a Constitutional breach and no other office or causes warrant impeachment.

The established process in New Hampshire is that after an investigation and recommendation by the Judiciary Committee, the House votes on articles of impeachment which constitute the formal allegation or allegations. Upon passage, by majority vote, the officer has been impeached. Once the House votes to **impeach**, the process moves to the Senate. The Senate acts as a court and tries the accused officer. It hears evidence, not unlike a trial, and has the duty to **convict** or **not convict**. Even if the decision of the Senate is not to convict, the accused is an *impeached officer*. The impeachment by the House does not remove the officer from office; it is only conviction by the Senate that results in the removal or another imposed penalty.

The impeachment process is an extreme measure – the last civil process measure available - in the democratic form of government in the United States. As such the process must be thoroughly and exhaustively followed. Only two impeachments have occurred in New Hampshire. In 1790, Justice Woodbury Langdon was impeached for neglecting his duties; he refused to try cases. He resigned before the Senate rendered a judgment. In 2000, Chief Justice David Brock was impeached by the House on four counts of maladministration or malpractice, and knowingly lying under oath. (Reference, HR 51 – 2000 House Journal pp 991 to 1052, and HR 50 – House Journal pp 571 to 580; 982 to 991) He was later acquitted by the Senate on a vote of seven to convict and fifteen to acquit. A vote of two thirds of the Senate membership was needed to convict.

The House may conduct its investigation in any manner it chooses. The process by the House must be fully, thoroughly, fairly and responsibly followed, in that impeachments are rare in state governments and it must be understood that the eyes of 49 states will be on us. The House votes on specific *articles of impeachment* specifying the grounds on which the officer's impeachment is based. The preliminary process of investigation and recommendation is within the purview of the Judiciary Committee. The committee must adopt procedural rules for its investigation, including the level of evidence; the House subsequently adopts rules such as the number of votes necessary to pass *articles of impeachment*.

B. HOUSE RESOLUTION 7

HR 7 was crafted using the Brock resolution (HR 50) as a guide. The Brock resolution called for the Judiciary Committee to conduct an investigation of Chief Justice David A. Brock and/or any other justice of the New Hampshire Supreme Court based on the report issued by the attorney general entitled "In re: W. Stephen Thayer III and Related Matters." The investigation was conducted and the Judiciary Committee reported its findings to the House in HR 51, in which the committee recommended to the house the impeachment of Chief Justice David A. Brock.

Presently, HR 7 authorizes the Judiciary committee as whole or by any subcommittee appointed by the chairman to investigate if grounds exist for the impeachment of Marital Master Phillip Cross and/or any other justice of the New Hampshire Superior Court. The Judiciary committee is directed to report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

The chairman of the Judiciary Committee in reviewing HR 7 in light of the actions taken in the Brock impeachment has chosen to appoint a subcommittee for a preliminary investigation and recommendation to the full Judiciary Committee. The full committee shall report its recommendation to the House with or without requests for additional authorizations as necessary to conduct a full, complete and professional investigation of Master Philip Cross and/or any other justice of the Superior Court.

C. TWO QUESTIONS MUST BE ANSWERED

1. Is Master Cross an officer?

All state employees are public servants and the public has a right to view their job performance. If the job performance of a public servant is poor or bad they can and should be terminated. From national and state research it is clear that all public servants can not be subject to impeachment. Under our constitution impeachment does not apply to all public servants - only **officers**. At-will workers, who function under the direction of a supervisor or manager, clearly can't be impeached. In the United States, research has not shown that the impeachment process has ever been utilized to remove an at-will employee. The termination of these employees is in the control of there supervisor or manager. A judicial branch master, marital or otherwise, is an at-will contract employee,

and functions under the supervision of a judge. A marital master is appointed for an initial term of three years by the governor and council; the master then functions within the Judicial Branch, and the second contract (5 years) instituted by the judicial branch at the recommendation of the supervising judge. During the second and subsequent terms the master remains an at-will employment. Masters are unlike department heads appointed by the Governor and Council for a term of years in that the department head is not an at-will appointment. Further, the master has limited authority; the master can make no final decisions, orders, or judgments. He/she can only make recommendations. The master's recommendation is read by a judge and the approving judge converts the recommendation into an enforceable order or returns the file to the master for additional information. Recognizing this limited authority, the question remains: Is a marital master intended to be an **officer** under our Constitution? This is the first question that must be answered. If the answer to this question is in the negative, and the master performed his/her job poorly, where does the fault lie? A logical conclusion is that it is a failure may be with the supervisory manager. If, however, the master is considered as an officer, the Judiciary committee must determine if breaches were sufficient under Part II, Article 38 of our Constitution to justify impeachment.

2. Did the actions of Master Cross constitute bribery, corruption, malpractice or maladministration in office and of such a magnitude for impeachment?

If Master Cross is determined to be an *officer* under Part II, Article 38 of our constitution, the next step is to determine if he was guilty of malpractice or maladministration, bribery or corruption. *Blacks Law Dictionary* defines *mal* as: "A prefix meaning bad, wrong, fraudulent." and malpractice as: "Any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or improper moral conduct." For HR 7, the term would be determined under the case holdings of malpractice or mal administration in New Hampshire courts. Generally in professional malpractice cases it is required for the party to prove that the defendant used less care than the average professional would utilize in the same circumstance. If in Master Cross's case, his actions were less than the normal standard utilized by other New Hampshire marital masters, it could be considered as malpractice or maladministration. This is the question that can't be answered without substantial cost and time for discovery and research.

If Master Cross is considered an officer under our Constitution, and there is reasonable cause to believe that there was a breach of such a magnitude to justify impeachment then an extensive investigation must be undertaken prior to moving into the trial preparation stage. Then, and only then, can the Judiciary Committee make its recommendation and the matter move to the full House for an impeachment vote.

D. JUDICIARY COMMITTEE ACTION FOLLOWING HR 7

I. Preliminary evaluation This phase will begin in October with the appointment of a sub-committee. They will report back to the full committee in late November or early

December 2011 so that a report can be made to the full house in early 2012 with additional requests, such as funding if necessary.

Due to the rarity and severity of the process, the House investigation must be exhaustive not unlike the trial preparation of a major civil suit or criminal trial. In the case of Chief justice Brock, the Judiciary Committee determined that it was necessary to secure the services of a major Boston law firm to review records, take depositions, conduct hearings and then and only then to recommend specific charges to the committee. The underlying facts in the Brock impeachment were quite limited and the Judiciary Committee had the benefit of a report by the Attorney General and the Judicial Conduct Committee prior to the discovery process. None the less, the discovery, including research of records and depositions extended months: the Judiciary Committee met seven times between April and July of 2000. The ultimate cost to the legislature was \$1,531,338.27.

The Chair of the Judiciary Committee currently estimates, just based on the allegations by Mr. Johnson and Mr. Puiia, that go back 10 years and as evidenced by voluminous docket cards (*see attached*), that the record review, depositions of parties and preparation of specific Articles of Impeachment in these two matters alone may very likely take from 10 to 14 months and require funding in the range of between \$3,000,000 and 4,000,000. As such, funding must be obtained in order for full discovery to begin.

II Pre hearing preparation This phase can begin in February and will include the following:

a. Adoption of procedural rules

The Judiciary Committee must adopt rules of procedure consistent with House Rule.

b. Legal Assistance

Because of the voluminous trial records and possible conflicts of interest with New Hampshire firms the services of a major Boston firm will be sought.

c. Record review

Obtain and review of all hearing records of the primary complaining parties, Johnson and Puiia and others if necessary.

d. Court Action

Superior and Supreme Court action may be necessary. The Puiia records are sealed at the request of the parties. If the parties do not authorize the unsealing, further court action will be necessary including a possible appeal to the Supreme Court.

e. Depositions

Depositions of all parties having any information must be taken as in the Brock Impeachment. A reasonable estimate of individuals to be deposed ranges from 20 to 40. The parties to be deposed must necessarily include Master Cross and all participants in the Johnson and Puiia cases.

III Full Judiciary Committee Hearing

a. Public hearing.

A full Judiciary Committee public hearing must be conducted with the introduction of all evidence to support specific impeachment charges. Parties in opposition will have an opportunity to make inquiries, cross examine witnesses and offer evidence. The public hearing will not be unlike a court trial.

b. Judiciary committee Executive Session

Following the evidentiary hearing the Judiciary Committee will hold an executive session and recommendation to the House. The impeachment of Chief justice David Brock this was in the form of HR 51 specifying five articles of impeachment.

IV Vote by full House of Representatives

Following the recommendation of the Judiciary Committee a debate and vote will be taken in the House. On July 12th, 2000 HR 51 passed the House by a vote of 253 to 95.

V Trial by Senate

In 2000, HR 51 moved to the Senate for them to hold a trial and vote to convict or not to convict. The process in the Senate is a, *trial de novo*, namely a full trial from the beginning. In the Brock case the trial occurred between August and October of 2000 and consisted of 15 meetings in which 28 witnesses were called to testify. The Senate voted not to convict.

E. CONCLUSION

Impeachment in New Hampshire is a serious remedy which must be utilized sparingly and with the utmost care and consideration. The process must be even-handed and thorough if the judiciary Committee is to meet its constitutional obligations. I hope this memo serves as guide to the committee and legislature as it begins to undertake its duty. I can not stress enough that once the formal investigative process begins that the nation's media and 49 other states will be closely viewing New Hampshire as they did during the Chief Justice Brock impeachment.

Robert H. Rowe, Chair
House Judiciary Committee

October 20, 2011

**TESTIMONY PRESENTED TO THE NH HOUSE JUDICIARY
COMMITTEE CONCERNING HR 7 ON FEBRUARY 22, 2011**

To:

NH House Judiciary Committee
Chair: Rep. Robert Rowe
Date: 02/22/2011

From:

Joseph J. Puiia, Jr. (Legal Party as an "Intervener" to case number 06-M-0312)
11 Adams Way
Middleton, NH 03887
(603) 473-8569 (Home)
(603) 502-1389 (Cell)
jpuia@roadrunner.com (email)

Dear Honorable Chairman Rowe and Honorable Committee Members,

I present the following information to you because after nearly four long totally exhausting, devastating and terrifying years of the above mentioned case before Master Cross we have no other avenue to address the totally unconstitutional, unethical and illegal orders and ruling by Master Cross. Many of Master Cross's actions and ruling in this case are in direct violation of the state of New Hampshire Constitution, the United States Constitution, court rules, our rights to due process, our civil rights, case law established by the Supreme Court and the Code of Judicial Conduct.

Please note that whenever paternal grandparents/Interveners is used in the following document it refers to myself, Joseph J. Puiia, Jr. and Pamela Ambrose who are the paternal grandparents in this case.

I will begin by stating pertinent information about my background:

-I am a retired federal law enforcement officer with a **secret-need to know clearance** with U.S. Customs and Border Protection, Department of Homeland Security. I retired with over thirty three years of service.

-I was required to pass full federal background investigations every five years while serving with U.S. Customs.

-While serving with U.S. Customs I personally arranged for clearance into our country with the U.S. Secret Service the arrival of former Presidents of the United States on three separate occasions. I cleared these Presidents into our country while being fully armed and face to face with them.

-I am currently employed as a contract worker for the U.S. Dept. of State at the National Visa Center, Portsmouth, NH. I passed a full federal background investigation in 2008 for the position.

-I have a superb work record, am respected in the community, absolutely clean record(no arrests), no drug or alcohol problems.

-I graduated from the University of Maine, Orono in 1968 with a BA in Political Science and after graduation I served our country as a combat veteran in the US Army with the 3rd BN 18th Artillery from 03/15/1969 to 05/15/1970 in Vietnam. I was honorably discharged.

Why I am presenting this testimony:

As stated above, I have been involved in a family matters case for approximately four years and am a party to the case as the paternal grandfather of two young children ages four and five and soon to be five and six. When this case was started by these children's mother they were only one and two years old.

Never in my long history as a federal law enforcement officer and dealing with enforcing laws have I seen nor imagined as lawless an environment as the Portsmouth Family Division under Master Cross's dictatorial and abusive rule.

Out of respect for your time I would like to address just some of the many astonishing violations of the law I have witnessed in the Portsmouth Family Division with Marital Master Philip Cross presiding.

It is my sincere hope for innocent children and families throughout this state that the Legislature intervenes through this committee and the Child and Family Law Committee and through any and all legal avenues to stop the horribly destructive human and civil rights abuses that occur regularly at the Portsmouth Family Division by Marital Master Philip Cross.

Marital Master Philip Cross's actions and rulings that are direct violations of the NH State Constitution, the United States Constitution, court rules, our right to due process, our civil rights, Case law established by the Supreme Court and the Code of Judicial Conduct.

1. As a beginning point, it is important to state that the Supreme Court of New Hampshire has ruled as follows regarding **terminating a loving and established relationship between children and grandparents:**

"it would be cruel and inhumane" to terminate the relationship between the children and his[their] grandparents abruptly." Preston v. Mercieri, 133, N.H. 36 (1990)

2. With the above considered, it is a fact that Master Cross scheduled a Hearing to occur on February 09, 2009.
3. It is a fact that the hearing was docketed as the Final Financial Matters Hearing.
4. It is a fact that the Interveners (the paternal grandparents) and the children saw each other regularly prior to the February 09, 2009 Hearing and as ordered by the Court.
5. It is a fact that when the Hearing began on February 09, 2009, Master Cross changed the docketed purpose of the Hearing ("Final Financial Matters Hearing") to parenting and grand parenting matters Hearing despite the strong objection of the Petitioner (Michael Puia) that was cut short by Master Cross and as such denied.
6. It is a fact that the Respondent arranged in advance for the play therapist to be present in court on February 09, 2009, however, the Respondent did so secretly and nefariously and did not inform the Petitioner or the Interveners that she had arranged for the play therapist to appear in court as an alleged "expert witness".

It is important to keep in mind that a play therapist would never take a day off from work and drive from Nashua to Portsmouth to testify at a Financial Matters Hearing – the play therapist was there for one purpose – to testify at a parenting and grand parenting matters Hearing which was not the docketed purpose of the February 09, 2009 Hearing.

In short, the preplanned and arranged presence of the play therapist shows the Respondent premeditated changing the docketed purpose of the hearing (through the GAL) yet failed to follow the tenants of Noticed Jurisdiction, failed to petition the Court for modification to a docketed hearing and knowingly manipulated the legal system (against the law) to serve the Respondent's own interests—something that any marital master or judge should have never allowed to occur, however, Master Cross not only allowed it, he 100% denied our ability to participate in the Hearing at all despite the fact that we are legal parties to the case and had Court Ordered grandparent time with our grandchildren.

7. It is a fact that the GAL and play therapist provided detailed testimony to Master Cross (over the objections of the Petitioner) at the February 09, 2009 Hearing.
8. It is a fact that Master Cross did not give the paternal grandparents/ Interveners a chance to address the Court at the February 09, 2009 Hearing.
9. It is a fact that Master Cross did not give the Interveners the opportunity to cross examine witnesses who testified before the Court at the February 09, 2009 Hearing.
10. It is a fact that Master Cross did not give the Interveners any ability to provide counter evidence at the February 09, 2009 Hearing.

11. It is a fact that Master Cross did not give the Interveners the opportunity to cross examine the Guardian ad Litem who recommended removing previously Court Ordered "visitation" rights of the paternal grandparents/Interveners at the February 09, 2009 Hearing.
12. It is a fact that Master Cross did not even allow the Interveners to sit at the table that litigants sit at or allow the Interveners to approach the podium to speak from at the February 09, 2009 Hearing.
13. It is a fact that Master Cross did not legally recognize the Interveners at the Hearing at all on February 09, 2009.
14. It is a fact that judges and marital masters are required by the Code of Judicial Conduct to recognize parties and enable parties to be heard { Canon 3,B,7 which reads}:

"A judge shall accord to every person who has legal interest in a proceeding, or that person's lawyer, the right to be heard according to the law."

15. It is a fact that on February 11, 2009, Master Cross made an Order that **"temporarily"** terminated any and all contact between the children and the Interveners despite the Interveners not being given any opportunity to participate in the Hearing. **That "temporary suspension" of our court ordered rights has now lasted 740 days with no end in sight.**
16. As a result of Master Cross's February 11, 2009 Order, the children went from seeing their paternal grandparents regularly on a weekly schedule to being ripped away from their loving grandparents without any warning, explanation or temporary closure for the children.
17. The paternal grandparents/Interveners were not even allowed to write or call their grandsons or even to say to their grandsons that they loved them and looked forward to seeing them in the future or to provide in any manner for a reasonable transition for the children from seeing their grandparents to not seeing or hearing from them at all.
18. The paternal grandparents/Interveners believe Master Cross misapplied the law when Master Cross abruptly and without warning terminated all contact our grandchildren were having with their grandparents. It is fundamentally important to note that the children were accustomed to spending significant amounts of time with their grandparents and paternal relatives from each of their births through the majority of their lives . The children were deeply bonded to their grandparents and many other relatives in their paternal family.

It is extremely important to note that Master Cross issued this extremely draconian

order not because we, the paternal grandparents, were in any way unfit or any danger to the children. Just the opposite is the case as Master Cross stated in a subsequent Court Order dated 03/19/2009 in denying our Interveners' Motion for Reconsideration of the Court's 02/11/2009:

“The court finds that the Interveners request is motivated by their love for their grandsons-they understandably want to spend time with them. The Respondent believes that the Interveners have not and would not intentionally harm their grandsons, a belief the court shares. The question for the court is not whether the Interveners are loving and attentive grandparents – they are; rather, the court must decide whether the boys have the emotional and mental strength to visit with them while their world is in such turmoil.”

19. Master Cross is known by many litigants for similar practices. In fact the Supreme Court of New Hampshire has already addressed this same issue with Master Cross in the Supreme Court case of *Vorce v. Vorce* (docket 2009-0157). Regarding Master Cross's actions, The Supreme Court said:

“The petitioner argues that the trial court violated her rights to due process by conducting a hearing on matters that were not stated in the hearing notice. We agree. Procedural due process means that parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Petition of Kilton, 156 N.H. 632, 638 (2007).

The United States Supreme Court has also ruled on the issue of notice to parties and giving the parties time to prepare for a hearing in advance as stated by the United States Supreme Court in *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972):

“For more than a century, the central meaning of procedural due process has been clear:

Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right, they must first be notified.”
Baldwin v. Hale, Wall.223, 233. See *Windsor v. McVeigh*, 93 U.S. 274; 167 U.S. 409; *Grannis v. Ordean*, 234 U.S. 385.

It is equally fundamental that the right to notice and an opportunity to be heard “must be granted at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552.”

20. Not only did Master Cross change the purpose of the Hearing on February 09, 2009 (against the law) he did it again on April 30, 2009 when there was a make-up Financial Matters Hearing. As the Hearing started he again changed the docketed and noticed purpose of the Hearing from financial matters to parenting matters and again the other side knew in advance and had an expert witness from Vermont present but

never notified us and we were not allowed any time to prepare, time to arrange for our own witnesses, not allowed to have a trial strategy and forced to participate in a Hearing that we were by law protected from. However, Master Cross held the Hearing and issued orders yet again.

21. It is a fact that Master Cross, after over three years of presiding over this case, has stated numerous times that he is not aware of the causes of the alleged "emotional struggles" of the minor children – the same "emotional struggles" Master Cross cites as the basis for terminating all contact the Interveners have with their grandchildren and that their grandchildren have with their entire paternal family except for one hour a week with their dad at a state supervision center.
22. It is a fact that the temporary termination of allowing any contact with our grandchildren has now lasted 720 days (certainly not temporary) with no end in sight. This means the children now ages 5 and 6, who previously spent significant amounts of time with their paternal family have not even heard one syllable from their grandparents and entire paternal family (other than their father) for 720 days. They have been 100% ostracized and isolated from an entire half of their lineage and birth family that they were deeply bonded to.
23. Adding further injury, Master Cross has received and has been made fully aware that the custody-driven false allegations of the Respondent against the Petitioner have been **fully investigated by four different DCYF investigations, the New Hampshire State Police, the Rockingham Sheriff's Department, the County Attorney's Office, the Child Advocacy Center, a forensic examiner and local police and all of the above returned the same finding regarding the respondent's allegations—Unfounded or no factual basis to support the Respondent's allegations.**

It is critical to keep in mind that my two very young grandchildren have been put through all the investigations, probing and repeated psychologically damaging questioning by the above mentioned agencies as a result of their mother's continuing false allegations and Master Cross's refusal to put an end to this disastrous litigation strategy and in fact he keeps rewarding her for it.

24. How then after over three years of investigations by numerous state agencies and professionals returning results of **unfounded or no evidence to support the Respondent's allegations, can Master Cross order that half the children's family be eradicated from their lives for approximately 740 days?**
25. In striking contrast, Master Cross allows the entire maternal family 100% access to the children, unabated time with the children and unmonitored activities, trips, vacations and family events with the children even though he states **"the source of the children's 'emotional struggles' was (and continues to be) unidentified".**
26. Further, Master Cross stated that the "emotional; struggles" could be a result of their

mother or the mother's day care center where the children spend the majority of their lives.

27. **With the above in mind, why would Master Cross allow the maternal family complete unrestricted time, contact and control over the children and deny any contact with the paternal grandparents and extended paternal family if the potential source for the children's "emotional struggles" may be from their mother or mother's family owned day care center?**
28. **It is a violation of due process, judicial discretion and the right to timely resolution of litigated matters to forcibly and needlessly torture children with being completely ripped away from an entire side of their birth family and lineage without any basis cited by Master Cross of harm caused by the Interveners/paternal grandparents or paternal family.**
29. **The casual observer as well as seasoned attorney would ask:**

If

Master Cross is not aware of any harms caused by the Interveners

and

Master Cross finds the Interveners to be loving, capable and nurturing

and

Master Cross is not aware of the source of the alleged "emotional struggles" of the children

and

Master Cross feels it is possible the "emotional struggles" could be from the Respondent or the maternally run and owned day care the children attend

Then

Why does the maternal family have 100% unrestricted, unregulated and unmonitored access to the children and the paternal family has 0% access to the children to include not even being able to call them at all, or send them letters saying we love them and hope that they're having lots of fun?

30. **The paternal grandparents/Interveners firmly believe that the continuing "temporary" termination of all contact the children have with their grandparents, cousins, aunts and uncles based on the above mentioned rulings and current rulings of Master Cross is extremely harmful and emotionally damaging to the children in what now has been approximately 740 days of complete and total isolation of the children from an entire family they love, are loved by and were deeply bonded to.**

31. In conclusion I must state the horrible and devastating injuries this case and Master Cross's illegal, unconstitutional orders and ruling has had on the entire paternal family but most particularly on my grandsons and their father and the paternal grandparents.

My son, Michael Puia, has worked and studied extremely hard to be a successful and good citizen and father. He graduated from college **Summa Cum Laude with a 4.00 grade point average in his major**. He turned down many lucrative job offers and joined the U.S. Marine Corps to serve his country for four years and was honorably discharged. He was doing very well with his children and his life before the children's mother started this case in the Portsmouth Family Division. Since the case started and particularly since Master Cross's involvement for the past three years his life has been systematically destroyed on all fronts by the children's mother's false accusations and by Master Cross's illegal, unconstitutional and abusive court rulings. His name and reputation have been destroyed and hence his ability to make a living and be able to provide adequately for his children and himself. He is qualified and on many state and federal aid programs that provide money and assistance for people who can no longer provide for themselves. He is now impoverished and indigent because of Master Cross's illegal and abusive court rulings. This is to say nothing of the extreme torment of having his children taken away from him for no just reason and the four years of living hell he has been subjected to by all the various state and local investigations of the false allegation charges and of Master Cross's illegal, unconstitutional and totally abusive court tactics and court rulings.

My very young grandchildren have also suffered tremendous and probably irreparable psychological damage because of all the above mentioned repeated investigations they have but subjected to because of their mother's false allegations against their father and Master Cross's illegal and abusive court rulings and orders. They have also been unjustly robbed and ripped away from their loving paternal family with no warning at all after having known and loved us and spent significant amounts of time with us all their lives. This is directly because of the orders of Master Philip Cross.

As for myself, I thought I had earned a good retirement after serving our country in time of war and in time of peace all my adult life. I looked forward to spending most of my time with my children and grandchildren and moved to my present location so I could do that. My life drastically changed after 05/22/2007 when my grandsons' mother illegally abducted them from their home with their father and started this case in the Portsmouth Family Division. I had faith in the system and court that it would know in very little time that we were obviously a very good family with good homes and excellent backgrounds and my son and the paternal family would be given fair parenting and visitation time with our grandchildren. It soon became very obvious that was not going to happen in Master Cross's court. The stress of the four years is beyond description. This case under Master Cross has taken over all our lives and dominates everything we do. I hate to even go to the mail box anymore.

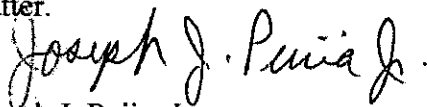
I have had to spend a good portion of my life saving to help my son and try to protect him from Master Cross with little or no success. I have also had to return to work to supplement what I have had to spend on this case which is approximately \$70,000.00 to date. As a family we have spent in excess of \$200,000.00 to date and it would be two or three times that amount if we had not stopped using attorneys about two years ago because we could no longer afford to. Simply stated, this case has taken over and dominated my life for the past four years and has robbed me of what I have worked for all my life—my son's success and good life and my precious time with my grandsons. These last four years can never be given back to me, my family and most importantly my son and his children. They are gone forever and we can never be made whole.

My son is a good and honest young man and we are a good family who have always played by the rules, worked hard to be successful and believed in our system of government and the rule of law. Marital Master Philip Cross has single handedly destroyed all that with his constant illegal behavior from the bench and it is well past time that the state legislature remove him from the bench because it is very clear the judiciary will not police itself.

It is my and my family's hope that this legislature can make some critical changes in the Family Court system that will prevent the tremendous abuses of law that I have witnessed and suffered in the Portsmouth Family Court under Master Cross's rule. In this time of great strain on state financial resources, the state has had to waste hundreds of thousands of dollars on this case that has absolutely no basis in fact at all. This is all because of the many illegal abuses by Master Cross in his endless pursuit to destroy an innocent young man's life because that young man chooses to fight for his constitutional rights and those of his young children.

My grandchildren have had their birthright to their paternal family stolen from them through no fault of their own or their paternal family. The above examples are but a few of many and I would be fully willing to provide detailed testimony to the committee or answer any questions the committee may have of me. I will also provide documented prove of my background should the committee desire it.

I sincerely thank this committee for its time and genuine concern in this critical matter.


Joseph J. Puiia, Jr.

Request to Seal this Testimony

The case we are involved in (06-M-0312) is fully sealed by the trial court and Supreme Court. We respectfully request that this testimony be sealed to maintain the Court Ordered seal of information in the case, however, we ask that a publicly available document be issued stating the outcome of this hearing.

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155 N.H. 524 (N.H. 2007)

924 A.2d 377

OPINION OF THE JUSTICES
(RECOMMENDATIONS OF MARITAL
MASTERS).

Request of the Senate No. 2007-263.

Supreme Court of New Hampshire.

May 11, 2007

Opinion Issued: May 30, 2007.

[924 A.2d 378] The New Hampshire Senate adopted the following resolution on April 12, 2007, and filed it with the supreme court on April 17, 2007:

"Whereas, SB 112, 'An Act relative to recommendations of marital masters,' is presently pending in the senate; and

"Whereas, SB 112 provides that 'all recommendations of marital masters shall become final unless within 10 days of the date of the clerk's written notice of the recommendation, a party requests that the recommendation be reviewed by a judge;' and

"Whereas, part II, article 46 of the New Hampshire constitution states: 'All *judicial officers*, the attorney general and all officers of the navy and general and field officers of the militia, *shall be nominated and appointed by the governor and council*; and every such nomination shall be made at least three days prior to such appointment; and no appointment shall take place, unless a majority of the council agree thereto.' (emphasis added); and

"Whereas, part II, article 73 of the New Hampshire constitution states: 'The tenure that all commissioned officers shall have by law in their offices shall be expressed in their respective commissions, and *all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior except those for whom a different provision is made in this constitution*. The governor with consent of the council may remove any commissioned officer for reasonable cause upon the address of both houses of the legislature, provided nevertheless that the cause for removal shall be stated fully and substantially in the address and shall not be a cause which is a sufficient ground for impeachment, and provided further that no officer shall be so removed unless he shall have had an

opportunity to be heard in his defense by a joint committee of both houses of the legislature.' (emphasis added); and

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"Whereas, in *Opinion of the Justices*, 128 N.H. 17, 509 A.2d 746 (1986), the New Hampshire supreme court held that marital masters were not judicial officers within the meaning of part I, article 46 of the New Hampshire constitution because they were neither nominated and appointed by the governor and council, nor enjoyed tenure during good behavior, and that such masters 'are authorized to make recommendations, which, though normally approved, have no binding force upon the court;' and

"Whereas, in *Witte v. Justices of the N.H. Superior Court*, 831 F.2d 362 (1987), the United States Court of Appeals for the First Circuit held that marital masters in New Hampshire 'have no inherent power, but rather derive all their power from the appointing judge or from the agreement of the parties;' and

"Whereas, in 2005, 177:14 (later codified as RSA 490-D:7), the legislature provided that henceforth the administrative judge of the judicial branch family division shall submit to the governor the name of a marital master nominee, and that upon acceptance by the governor, such nominee would be submitted to the executive council [924 A.2d 379] for confirmation, *see* RSA 490-D:7, II, but that once confirmed such new marital master is appointed for a specific term, *see* RSA 490-D:7, III; *see also* Super. Cr. Admin. R. 12-6; and

"Whereas, a public hearing was held before the senate judiciary committee on SB 112, and the bill was reported out of committee with a recommendation of ought to pass and, upon second reading before the senate, was laid upon the table because a question has been raised concerning whether only the opportunity for review by a judge of a recommendation of a marital master is in any way contrary to the New Hampshire constitution; and

"Whereas, SB 112 raises an important question of law awaiting further consideration and action in the New Hampshire senate; now therefore, be it

Resolved by the Senate:

"That, pursuant to part II, article 74 of the New Hampshire Constitution, the justices of the supreme court be respectfully requested to give their opinion as expeditiously as possible on the following questions of law:

"1. Would the enactment of SB 112, authorizing all recommendations of marital masters to become final

within 10 days of the date of the clerk's written notice of the recommendation unless a party requests that the

recommendation be reviewed by a judge, as applied to recommendations of marital masters in both the judicial branch family division and in the superior court, violate the requirements of part II, article 46 and/or part II, article 73 of the New Hampshire constitution?

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"2. Would the enactment of SB 112 violate any other provision of the New Hampshire constitution?"

To the Honorable Senate:

The following response is respectfully returned:

Senate Bill (SB) 112 proposes to amend RSA 490-D:9 (Supp.2006). As amended, RSA 490-D:9 would provide that "[a]ll recommendations of marital masters shall become final unless within 10 days of the date of the clerk's written notice of the recommendation, a party requests that the recommendation be reviewed by a judge." RSA 490-D:9 currently provides that "[a]ll recommendations of marital masters shall be signed by a judge."

We have been asked to give our opinion on two questions. First, whether enactment of SB 112 would "violate the requirements of part II, article 46 and/or part II, article 73 of the New Hampshire constitution," and second, whether enactment of SB 112 would "violate any other provision of the New Hampshire constitution." We have historically declined to answer general inquiries on constitutional infirmity and, in keeping with that practice, we respectfully decline to answer the second question. See *Opinion of the Justices (Weirs Beach)*, 134 N.H. 711, 717, 598 A.2d 864 (1991). We turn, therefore, to the first question.

Part II, Article 46 of the New Hampshire Constitution provides, in pertinent part: "All judicial officers, the attorney general, and all officers of the navy, and general and field officers of the militia, shall be nominated and appointed by the governor and council."

Part II, Article 73 of the New Hampshire Constitution provides, in pertinent part: "[A]ll judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior except those for whom a different provision is made in this constitution."

1924 A.2d 3801. Although marital masters provide invaluable service to the judicial branch and the citizens of the state, we conclude that they are not judicial officers within the meaning of Part II, Articles 46 and 73 of the New Hampshire Constitution. Because SB 112 would grant them the authority of judicial officers, even though they are not tenured as such, we answer your first

question in the affirmative.

"[A] judicial officer within the meaning of part II, article 46 must, by definition, be nominated and appointed by the governor and council, and must be commissioned to hold office during good behavior." *Opinion of the Justices*, 128 N.H. 17, 19, 509 A.2d 746 (1986) (quotation and citations omitted). Although pursuant to RSA 490-D:7 (Supp.2006), marital masters are now nominated and initially appointed by the governor and council, they are not commissioned to hold office during good behavior, and, therefore, are not judicial officers within the meaning of the State Constitution. Under RSA

Page 527

490-D:7, III marital masters "serve an initial term of 3 years." "Subsequent reappointments shall be made in accordance with judicial branch family division rules" and "[d]uring appointment terms, the authority and responsibility to conduct annual performance reviews, and termination, if necessary, shall be with the administrative judge of the judicial branch family division." RSA 490-D:7, III. Pursuant to this provision, marital masters "have no tenure and are removable by the court at will." *Opinion of the Justices*, 128 N.H. at 20, 509 A.2d 746.

Because marital masters are not judicial officers within the meaning of the State Constitution, they are authorized only "to make recommendations, which, though normally approved, have no binding force upon the court." *Id.* SB 112, however, proposes to vest marital masters with one of the "necessary characteristic[s] of a judicial officer": "the authority to render judgment to determine issues that are properly raised before the judicial branch." *Id.* at 19, 509 A.2d 746. Vesting marital masters with this authority violates Part II, Articles 46 and 73 of the State Constitution. See *id.* at 21, 509 A.2d 746.

We have not been asked and therefore do not opine upon whether this constitutional infirmity could be eliminated by amending SB 112 to permit parties to consent in advance to marital masters entering final judgment, see 28 U.S.C. § 636(c) (2000), or by amending it to limit the authority of marital masters to enter final decisions upon nondispositive motions, see 28 U.S.C. § 636(b) (2000).

John T. Broderick, Jr., Linda Stewart Dalianis, James E. Duggan, Richard E. Galway, Gary E. Hicks.

Hon. EDWIN W. KELLY, of Plymouth, filed a memorandum in support of negative answers to the questions.



State of New Hampshire

HOUSE OF REPRESENTATIVES
33 North State Street
Legislative Office Building, Room 208
Concord, NH 03301-6334

Robert H. Rowe
Chairman
Gregory M. Sorg
Vice Chairman

TEL: (603) 271-3184
TDD Access: Relay NH 1-800-735-2964

COMMITTEE ON JUDICIARY

MEMORANDUM

TO: Members of the HR 7 Subcommittee

FROM: Rep. Robert H. Rowe, Chair/House Judiciary Committee
PO Box 1117
Amherst, NH 03031-1117
Tel: (603) 673-2693
rhowe@comcast.net

SUBJECT: Marital Master Cross Impeachment

DATE: September 29, 2011

Thank you for your willingness to serve on the subcommittee to undertake to answer preliminary questions as to the process for the impeachment of Marital Master Cross. I will formally appoint you as members of the subcommittee at our full committee meeting on October 25, 2011. However so as to allow each of you to be prepared for a prompt subcommittee meeting following the October 25th meeting, I am providing each of you a packet of documents so that you can become acquainted with the impeachment process under New Hampshire Constitution, Part II, Articles 17 and 38. The enclosed documents include:

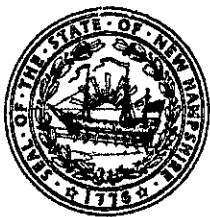
1. Overview by Robert H. Rowe, Chair, House Judiciary Committee
2. Court docket cards for the David Johnson divorce
3. Court docket cards for the Michael Puiia divorce
4. Copies of House Resolutions 50 through 53 for the Brock impeachment
5. Copy of House Resolution 7 for the Cross impeachment

Please review these documents so that the subcommittee can meet in November and be able to make a recommendation to the full committee in early January.

I would like to schedule our first subcommittee meeting for November 1st in Room 208 at 10:30AM. If this date presents a problem, please contact me promptly so that I can make other arrangements. It is vital that each of you be present.

The next step in the process will be to address the issue to the full House including requests for funding necessary for the investigative process.

cc: Speaker William O'Brien



State of New Hampshire

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COMMITTEE ON JUDICIARY

OVERVIEW OF IMPEACHMENT PROCESS AND JUDICIARY COMMITTEE OBLIGATION UNDER HR 7

A. BACKGROUND

Impeachment is a complex and deliberative process in New Hampshire in which a state **officer** is accused of an act that warrants removal from office as well as other punishments. This authority can be found in the New Hampshire Constitution, Part II Articles 17 and 38. Impeachment should not be confused with a recall election. A recall election is usually initiated by voters and can be based on "political charges." Impeachment is instituted by a constitutional body; in New Hampshire, it is the House of Representatives and is based on specific charges of wrongdoing. Under Part II, Article 38 of the New Hampshire Constitution, it is limited to charges that an officer of the state committed bribery, corruption, malpractice or maladministration in office. Further, the accused must be an *officer*. It is a Constitutional breach and no other office or causes warrant impeachment.

The process established in New Hampshire is that after an investigation and recommendation by the Judiciary Committee, the House votes on articles of impeachment which constitute the formal allegation or allegations. Upon passage, by majority vote, the officer has been impeached. Once the House votes to **impeach**, the process moves to the Senate. The Senate acts as a court and tries the accused officer. It hears evidence, not unlike a trial, and has the duty to **convict** or **not convict**. Even if the decision of the Senate is not to convict, the accused is an *impeached officer*. The impeachment by the House does not remove the officer from office; it is only conviction by the Senate that results in the removal or another imposed penalty.

The impeachment process is an extreme measure – the last civil process measure available - in the democratic form of government in the United States. As such the process must be thoroughly and exhaustively followed. Only two impeachments have occurred in New Hampshire. In 1790, Justice Woodbury Langdon was impeached for neglecting his duties; he refused to try cases. He resigned before the Senate rendered a judgment. In 2000, Chief Justice David Brock was impeached by the House on four counts of maladministration or malpractice, and knowingly lying under oath. He was later

acquitted by the Senate on a vote of seven to convict and fifteen to acquit. A vote of two thirds of the Senate membership was needed to convict.

The House may conduct its investigation in any manner it chooses. The process by the House must be fully, thoroughly, fairly and responsibly followed in that impeachments are rare in state governments and it must be understood that the eyes of 49 states will be on us. The House votes on specific *articles of impeachment* specifying the grounds on which the officer's impeachment is based. The preliminary process of investigation and recommendation is within the power of the Judiciary Committee. The committee must adopt procedural rules for its investigation, including the level of evidence; the House subsequently adopts rules such as the number of votes necessary to pass *articles of impeachment*.

B. HOUSE RESOLUTION 7

HR 7 was crafted using the Brock resolution (HR 50) as a guide. The Brock resolution called for the Judiciary Committee to conduct an investigation of Chief Justice David A. Brock and/or any other justice of the New Hampshire Supreme Court based on the report issued by the attorney general entitled "In re: W. Stephen Thayer III and Related Matters." The investigation was conducted and the Judiciary Committee reported its findings to the House in HR 51, in which the committee recommended to the House the impeachment of Chief Justice David A. Brock; HR 52, in which the committee recommended that no article of impeachment be brought against Associate Justice Sherman Horton; and HR 53, in which the committee recommended that no article of impeachment be brought against Associate Justice John Broderick.

Presently, HR 7 authorizes the Judiciary Committee as whole or by any subcommittee appointed by the chairman to investigate if grounds exist for the impeachment of Marital Master Phillip Cross and/or any other justice of the New Hampshire Superior Court. The Judiciary Committee is directed to report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

The Chairman of the Judiciary Committee in reviewing HR 7 in light of the actions taken in the Brock impeachment has chosen to appoint a subcommittee for a preliminary investigation and recommendation to the full Judiciary Committee. The full committee shall report its recommendation to the House with or without requests for additional authorizations as necessary to conduct a full, complete and professional investigation of Master Philip Cross and/or any other justice of the Superior Court.

C. TWO QUESTIONS MUST BE ANSWERED

1. Is Master Cross an officer?

Impeachment under our constitution does not apply to all public servants. At-will workers, who function under the direction of a supervisor or manager, clearly can't be impeached. In the United States, research has not shown that the impeachment process

has ever been utilized to remove an at-will employee. The termination of these employees is in the control of the supervisor or manager. A judicial branch master, marital or otherwise, is an at-will contract employee. While he/she is appointed for an initial term of three years by the Governor and Council, and the second contract (5 years) instituted by the Judicial Branch, the employment is at-will. Masters are unlike department heads appointed by the Governor and Council in that the department head is not an at-will appointment. Further, the master has limited authority in that a master can make no final decisions, orders, or judgments. He/she can only make recommendations. The master's recommendation is read by a judge and the approving judge converts the recommendation into an enforceable order or returns the file to the master for additional information. Recognizing this limited authority, the question remains: Is a marital master intended to be an officer under our Constitution? This is the first matter to be determined before reaching the impeachment cause of action question.

2. Did the actions of Master Cross constitute bribery, corruption, malpractice or maladministration in office?

If Master Cross is determined to be an *officer* under Part II, Article 38 of our constitution, the next step is to determine if he was guilty of malpractice or maladministration, bribery or corruption. *Blacks Law Dictionary* defines *mal* as: "A prefix meaning bad, wrong, fraudulent." and malpractice as: "Any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or improper moral conduct." For HR 7, the term would be determined under the case holdings of malpractice or maladministration in New Hampshire courts. Generally in professional malpractice cases it is required for the party to prove that the defendant used less care than the average professional would utilize in the same circumstance. If in Master Cross's case, his actions were less than the normal standard utilized by other New Hampshire marital masters, it could be considered as malpractice or maladministration. The former question is a question of law that can't be answered without substantial cost and time for discovery and research. But if Master Cross is considered an officer under our Constitution, then trial preparation must be extensive and thorough.

D. JUDICIARY COMMITTEE ACTION FOLLOWING HR 7

I. Preliminary evaluation This phase will begin in October with the appointment of a subcommittee. They will report back to the full committee in late November or early December 2011 so that a report can be made to the full House in early 2012 with additional requests, such as funding, if necessary.

Due to the rarity and severity of the process, the House investigation must be exhaustive not unlike the trial preparation of a major civil suit or criminal trial. In the case of Chief Justice Brock, the Judiciary Committee determined that it was necessary to secure the services of a major Boston law firm to review records, take depositions, conduct hearings and then and only then to recommend specific charges to the committee. The underlying facts in the Brock impeachment were quite limited and the Judiciary Committee had the benefit of a report by the Attorney General and the Judicial Conduct Committee prior to

the discovery process. None the less, the discovery, including research of records and depositions extended months: the Judiciary Committee met seven times between April and July of 2000. The ultimate cost to the legislature was \$1,531,338.27.

The Chair of the Judiciary Committee currently estimates, just based on the allegations by Mr. Johnson and Mr. Puiia, that go back 10 years and as evidenced by voluminous docket cards (*enclosed*), that the record review, depositions of parties and preparation of specific Articles of Impeachment in these two matters alone may very likely take from 10 to 14 months and require funding in the range of between \$3,000,000 and 4,000,000. As such, funding must be obtained in order for full discovery to begin.

II. Pre hearing preparation This phase can begin in February and will include the following:

a. Adoption of procedural rules

The Judiciary Committee must adopt rules of procedure consistent with House rules.

b. Legal Assistance

Because of the voluminous trial records and possible conflicts of interest with New Hampshire firms the services of a major Boston firm will be sought.

c. Record review

Obtain and review all hearing records of the primary complaining parties, Johnson and Puiia and others if necessary.

d. Court Action

Superior and Supreme Court action may be necessary. The Puiia records are sealed at the request of the parties. If the parties do not authorize the unsealing, further court action will be necessary including a possible appeal to the Supreme Court.

e. Depositions

Depositions of all parties having any information must be taken as in the Brock Impeachment. A reasonable estimate of individuals to be deposed ranges from 20 to 40. The parties to be deposed must necessarily include Master Cross and all participants in the Johnson and Puiia cases.

III. Full Judiciary Committee Hearing

a. Public hearing.

A full Judiciary Committee public hearing must be conducted with the introduction of all evidence to support specific impeachment charges. Parties in opposition will have an opportunity to make inquiries, cross examine witnesses and offer evidence. The public hearing will not be unlike a court trial.

b. Judiciary Committee Executive Session

Following the evidentiary hearing the Judiciary Committee will hold an executive session and make a recommendation to the full House. In the impeachment of Chief Justice David Brock this was in the form of HR 51 specifying five articles of impeachment.

IV. Vote by full House of Representatives Following the recommendation of the Judiciary Committee a debate and vote will be taken in the House. On July 12th, 2000 HR 51 passed the House by a vote of 253 to 95.

V. Trial by Senate In 2000, HR 51 moved to the Senate for a trial and vote to convict or not to convict. The process in the Senate is a *trial de novo*, namely a full trial from the beginning. In the Brock case the trial occurred between August and October of 2000 and consisted of 15 meetings in which 28 witnesses were called to testify. The Senate voted not to convict.

E. CONCLUSION

Impeachment in New Hampshire is a serious remedy which must be utilized sparingly and with the utmost care and consideration. The process must be even-handed and thorough if the Judiciary Committee is to meet its constitutional obligations. I hope this memo serves as guide to the committee and legislature as it begins to undertake its duty. I can not stress enough that once the formal investigative process begins that the nation's media and 49 other states will be closely viewing New Hampshire as they did during the Chief Justice Brock impeachment.

Robert H. Rowe, Chair
House Judiciary Committee

Complete Document

Can Be Viewed

In Bill Folder

CASE SUMMARY

CASE NO. 622-2000-DM-00407

In the Matter of Jennifer L. Johnson and David W. Johnson

§
§
§
§

Location: 6th Circuit - Family Division - Franklin

Filed on: 07/07/2000

Case Number History:

CASE INFORMATION

Warrants

Child Support - Johnson, David W (Judicial Officer: Gordon, Edward M)
 04/26/2010 12:14 PM Executed
 04/26/2010 12:12 PM Issued
 04/07/2010 11:12 AM Active
 Fine: \$0 \$2,000.00

Case Type: Ind. Pet'n for Annulment, Leg. Sep

Case Status: 12/05/2007 Brought Forward

Case Flags: Sealed Case Documents

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number 622-2000-DM-00407
 Court 6th Circuit - Family Division - Franklin
 Date Assigned 10/13/2010

PARTY INFORMATION

Petitioner Johnson, Jennifer Lynn
 17 Fairway Drive - Apt. 17
 Derry, NH 03038-8122

Lustenberger, Daniel D., ESQ
 Retained
 603-679-9633(W)
 Attorney At Law PLLC
 PO Box 952
 Epping, NH 03042

Respondent Johnson, David
 10 Cunningham Drive
 Derry, NH 03038
 Removed: 06/03/2010
 Clerical Error

Johnson, David W
 10 Cunningham Drive
 Derry, NH 03038

Pro Se
 603-560-1892(H)
 10 Cunningham Drive
 Derry, NH 03038

Agency Office of Cost Containment/GAL
 State House Annex Room 400
 25 Capitol Street
 Concord, NH 03301

Child [REDACTED]

Division of Human Services Central Registry
 129 Pleasant St.
 Brown Building
 Concord, NH 03301-3857
 Removed: 01/25/2010
 Inactive Brought Forward

NH Division of Health and Human Services

Pond, Jamie L.
 Retained

CASE SUMMARY
CASE NO. 622-2000-DM-00407

|

TARGET DATE

TIME STANDARDS

Docket Number: 2002-0009

Filing Date: 1/4/2002

Case Title: In the Matter of Jennifer L. Johnson and David W. Johnson

Derry Family Division

Appellant(s): Ms. Jennifer L. Johnson

Disqualification:

Special Assignments:

Case Summary: Divorce - whether court erred by awarding joint physical custody; application of incorrect standard in deciding custody issue

Oral Argument Date:

Trial Court Name: Derry Family Division

Agency Name:

Support Staff:

Plaintiff

Plaintiff
Ms. Jennifer L. Johnson
N/A
N/A, NH 99999

Attorney
Elaine M. Kennedy, Esq.
One Butterick Road
P.O. Box 937
Londonderry, NH 03053

Defendant

Defendant
David W. Johnson
N/A
N/A, NH 99999

Attorney
Laura J. Brevitz, Esq.
69 West North Street
Manchester, NH 03104

Attorney
J. Campbell Harvey, Esq.
51 High Street
Manchester, NH 03104-6116

Number of Pages:

Estimate: \$

Stenographer(s):

Filing Fee:

Paid:

Waived: No

Motion Pending: No

Time Payments:

Exhibits:

Certified Copy:

Final Order Date:

Trial Court Judge (s): Hon. Patricia L. Reardon

Trial Court Docket: 1999-M-0172

Docket Entries

Effective Date	Title
01/04/2002	Notice of appeal filed
01/28/2002	Confidentiality order
01/29/2002	Brief memo order
02/11/2002	Redacted notice of appeal filed (one redacted copy) (Elaine M. Kennedy).
02/11/2002	Memorandum (Elaine M. Kennedy).
02/13/2002	Correspondence received regarding screening should be deferred (J. Campbell Harvey).
02/15/2002	Defer screening order
04/02/2002	Copy of Derry Family Court's Order on motion to reconsider filed (Elaine M. Kennedy).
04/10/2002	Other-Redacted Amended Notice of Appeal
05/24/2002	Final Order
06/11/2002	Certificate of order



Docket Number: 2006-0018

Filing Date: 1/9/2006

Case Title: In the Matter of Jennifer L. Johnson and David W. Johnson

Derry Family Division

Appellant(s): Mr. David W. Johnson

Disqualification: Hon. Gary Hicks is disqualified

Special Assignments:

Case Summary: post-divorce; whether trial court erred in giving appellee sole decision-making authority over child; whether trial court erred in refusing to admit and consider DCYF report and corrected report; whether trial court erred in increasing appellant's child support obligation; whether trial court erred in failing to appoint a GAL; whether trial court erred when it held hearing on October 31 on motion filed on October 21

Oral Argument

Date:

Trial Court Name: Derry Family Division

Agency Name:

Support Staff:

Petitioner

Petitioner
Ms. Jennifer L. Johnson
17 Fairways drive, Apt 17
Derry, NH 03038

Attorney
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80 Merrimack Street
Manchester, NH 03101

Attorney
L. Jonathan Ross, Esq.
PO Box 808
Manchester, NH 03105-0808

Respondent

Respondent
Mr. David W. Johnson
PO Box 573
Londonderry, NH 03053

Attorney
Paula J. Werme, Esq.
83 North Main Street
Boscawen, NH 03303-1235

Guardian ad litem

Guardian ad litem
Timothy M. Cunningham, Esq.
3 Dowaliby Court
Dover, NH 03820

Number of Pages:

Estimate: \$175.00

Stenographer (s):

No. of Volumes:	Title	Effective Date	No. of Volumes
	Transcript filed (1 vol.) 10/31/05 hearing; complete; under 100 pgs.	04-28-2006	1
	Transcript filed (1 vol.) 1/17/06 hearing; complete; over 100 pgs.	09-08-2006	1
	Total No. of Volumes		2

Filing Fee: \$30.00
Paid: Yes
Waived: No
Motion Pending: No
Time Payments:

Exhibits:**Certified Copy:****Final Order Date:**

Trial Court Judge(s): Hon. Lucinda V. Sadler

Trial Court Docket: 2000-M-0407

Docket Entries

Effective Date	Title
01/09/2006	Notice of appeal filed (David W. Johnson).
01/09/2006	Motion to waive filing fee; affidavit of assets and liabilities (David W. Johnson).
01/13/2006	Correspondence assigning docket number.
01/24/2006	Confidentiality Order
01/30/2006	Order on motion to waive filing fee-pay reduced fee
02/13/2006	Reduced filing fee paid per order (David Johnson)
02/13/2006	Two redacted copies of the notice of appeal filed (David W. Johnson)
02/13/2006	Motion to seal financial statements (David W. Johnson)
03/02/2006	Acceptance and transcript payment order
03/23/2006	Service copy of letter forwarding tapes to transcript coordinator filed (Loren Thompson)
03/28/2006	Service copy of notice to court reporter to prepare transcript filed (Janice C. Boynton)
03/31/2006	Appearance on behalf of Jennifer L. Johnson filed (Francis G. Murphy).
04/12/2006	Service copy of notice to Mr. Johnson that an additional transcript fee is required (Loren Thompson)
04/28/2006	Transcript filed (1 vol.) 10/31/05 hearing; complete; under 100 pgs.
05/04/2006	Briefing Order
06/01/2006	David Johnson's motion to consolidate (2006-0018 & 2006-0325) and extend (David Johnson).
06/07/2006	Jennifer Johnson's objection to motion to consolidate (2006-0018 & 2006-0325) and extend filed (Francis G. Murphy).
06/19/2006	Appearance on behalf of David Johnson (Paula Werme).
06/19/2006	Response to objection to motion to consolidate and extend (Paula Werme).
06/20/2006	Order on motion to consolidate, vacate briefing and pay transcript fee
06/20/2006	On 06/20/2006 Case was consolidated with Case(s) 2006-0325, all further postings to Case 2006-0018
07/07/2006	Correspondence re transcript payment filed (Loren Thompson)
07/10/2006	Service copy of notice to transcription coordinator to order transcripts filed (Loren Thompson)
07/12/2006	Service copy of notice to court reporter to prepare transcript filed (Jennifer Westover)
09/08/2006	Transcript filed (1 vol.) 1/17/06 hearing; complete; over 100 pgs.
09/15/2006	Briefing Order
10/06/2006	David Johnson's partially assented-to motion for an extension of time to file brief (Paula J. Werme).

10/27/2006 Order on David Johnson's motion for an extension of time
11/30/2006 Brief and appendix filed (Paula J. Werme). Atty. Werne request 15 minutes oral arugment.
01/05/2007 Assented-to motion for an extension of time to file brief (Francis G. Murphy).
01/08/2007 Order on assented-to motion for an extension of time, granted
01/16/2007 Brief on behalf of Jennifer L. Johnson filed (Francis G. Murphy). Atty. Murphy request 15 minutes oral argument.
02/22/2007 Submitted On Briefs
03/06/2007 Affirmed
03/23/2007 MANDATE ISSUED
04/09/2007 Two transcripts (10/31/05 & 1/17/06) returned to Derry Family Division.
04/26/2007 Return receipt received (Derry Family Division).



Docket Number: 2006-0325

Filing Date: 4/27/2006

Case Title:

In the Matter of Jennifer Johnson and David Johnson

Derry Family Division

Appellant(s): Mr. David W. Johnson

Disqualification:

Special Assignments:

Case Summary:

Oral Argument Date:

Trial Court Name: Derry Family Division

Agency Name:

Support Staff:

PetitionerPetitioner
Ms. Jennifer L. Johnson
N/A
N/A, NH 99999Attorney
Francis G. Murphy, Esq.
80 Merrimack Street
Manchester, NH 03101**Respondent**Respondent
Mr. David W. Johnson
PO Box 573
Londonderry, NH 03053Attorney
Paula J. Werme, Esq.
83 North Main Street
Boscawen, NH 03303-1235

Guardian ad litemGuardian ad litem
Timothy M. Cunningham, Esq.
3 Dowalby Court
Dover, NH 03820

Number of Pages:

Estimate: \$900.00

Stenographer(s):

Filing Fee: \$.00

Paid: No

Waived: No

Motion Pending: Yes


Time Payments:

Exhibits:**Certified Copy:**

Final Order Date: 03/28/2006
Trial Court Judge(s): Hon. Lucinda V. Sadler
Trial Court Docket: 2000-M-0407

Docket Entries

Effective Date	Title
04/27/2006	Notice of appeal filed (David W. Johnson)
04/27/2006	Motion to waive filing fee (David W. Johnson)
04/27/2006	Affidavit of assets and liabilities (David W. Johnson)
05/05/2006	Correspondence assigning docket number
05/12/2006	Confidentiality Order
05/16/2006	Acceptance Order; Transcript; Motion to waive filing fee granted
06/01/2006	David Johnson's motion to consolidate (2006-0018 & 2006-0325) and extend (David Johnson).
06/01/2006	David Johnson's motion for an extension of time to pay transcript fee (David Johnson).
06/07/2006	Jennifer Johnson's objection to motion to consolidate (2006-0018 & 2006-0325) and extend filed (Francis G. Murphy).
06/19/2006	Appearance on behalf of David Johnson (Paula Werme).
06/19/2006	Response to objection to motion to consolidate and extend (Paula Werme).
06/20/2006	Motion to consolidate granted
06/20/2006	On 06/20/2006 Case was consolidated with Case(s) 2006-0018, all further postings to Case 2006-0018
03/06/2007	Affirmed



Docket Number: 2007-0823

Filing Date: 11/26/2007

Case Title: In the Matter of Jennifer L. Johnson and David W. Johnson

Derry Family Division

Appellant(s): David W. Johnson

Disqualification:

Special Assignments:

Case Summary:

Oral Argument Date:

Trial Court Name: Derry Family Division

Agency Name:

Support Staff:

Petitioner

Petitioner
Ms. Jennifer L. Johnson
17 Fairway Drive, Apt. 17
Derry, NH 03038

Respondent

Respondent
David W. Johnson
6A Josephine Drive
Londonderry, NH 03053

Guardian ad litem

Guardian ad litem
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Other

Other
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Durham, NH 03824-0193

Other
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Concord, NH 03301

Attorney
Susan N. Brisson, Esq.
129 Pleasant Street
Concord, NH 03301

Attorney
Attorney General
33 Capitol Street
Concord, NH 03301

Attorney
John L. Williams, Esq.
10 Route 125, Box 1209
Kingston, NH 03848

Number of Pages:**Estimate:** \$525.00**Stenographer(s):**

	Title	Effective Date	No. of Volumes
No. of Volumes:	Transcripts filed (3 vols.) 5/21/07, 7/11/07, 8/24/07; complete; over 100 pgs.	06-11-2008	3
	Total No. of Volumes		3

Filing Fee: \$.00**Paid:** No**Waived:** No**Motion Pending:** Yes**Time Payments:**

Exhibits:**Certified Copy:****Final Order Date:** 10/26/2007**Trial Court Judge (s):** Hon. Michael J. Ryan**Trial Court Docket:** 2000-M-0407

Docket Entries

Effective Date	Title
11/26/2007	Motion for an extension of time to file notice of appeal (David W. Johnson)
11/26/2007	Motion to waive filing fee (David W. Johnson)
11/26/2007	Affidavit of assets and liabilities (David W. Johnson)
12/04/2007	Correspondence re docket number
12/17/2007	Order on motion for an extension of time to file NOA granted; Mr. Johnson must pay filing fee
01/07/2008	Notice of appeal (David Johnson).
01/07/2008	David Johnson's motion for reconsideration for filing fee waiver; affidavit of assets and liabilities refiled (David Johnson).
01/23/2008	Order on motion for reconsideration of order denying waiver of filing fee granted in part
02/07/2008	Mr. Johnson here-Filing fee of \$137.50 paid.
02/12/2008	Acceptance and transcript order
02/15/2008	Withdrawal of John Williams as counsel for NH Department of Health & Human Services (John Williams).
02/15/2008	Appearance of Susan N. Brisson as counsel for NH Department of Health & Human Services (Susan N. Brisson).
02/27/2008	David Johnson's motion for an extension of time to pay transcript fee (David W. Johnson).
03/05/2008	Correspondence re nonpayment of transcript fee not filed (Juanita Orzechowski)

03/19/2008 Order on motion for an extension of time to pay transcript deposit granted without further extension
04/09/2008 Correspondence re transcript deposit received (Juanita Orzechowski-Derry Family Division)
04/11/2008 Service copy re transcript payment filed and tapes sent to transcript coordinator (Juanita Orzechowski)
04/16/2008 Service copy of notice to court reporter to prepare transcript filed (Wendy M. Mayo)
06/11/2008 Transcripts filed (3 vols.) 5/21/07, 7/11/07, 8/24/07; complete; over 100 pgs.
06/13/2008 Briefing Order
07/28/2008 David Johnson's motion for an extension of time to file briefs (David Johnson).
08/20/2008 Order on motion for an extension of time to file brief granted
09/11/2008 Appeal dismissed
09/25/2008 MANDATE ISSUED
10/07/2008 3 transcripts mailed back to DFD
10/14/2008 Return receipt received (Derry Family Division)



Docket Number: 2010-0319

Filing Date: 5/13/2010

Case Title:

Petition of David W. Johnson

Derry Family Division

Appellant(s):

Mr. David W. Johnson

Disqualification:

Special Assignments:

Case Summary:

Oral Argument Date:

Trial Court Name:

Derry Family Division

Agency Name:

Support Staff:

Petitioner

Petitioner
Mr. David W. Johnson

Respondent

Respondent
Ms. Jennifer L. Johnson

Attorney
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BOX 952
Epping, NH 03042

Guardian ad litem

Guardian ad litem
Mr. Bruce J. Wechsler
PO Box 762
Londonderry, NH 03053-0762

Other

Other
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Frank Nachman, Esquire
129 Pleasant Street
Concord, NH 03301

Attorney
Attorney General
33 Capitol Street
Concord, NH 03301

Attorney
Jamie L. Pond, Esq.
NH Department of Health and Human Services-Division of Child
Support Services
129 Pleasant Street
Concord, NH 03301

Number of Pages:**Estimate:** \$0.00**Stenographer(s):**

Filing Fee: \$205.00**Paid:** Yes**Waived:** No**Motion Pending:** No**Time Payments:**

Exhibits:**Certified Copy:****Final Order Date:** 3/3/2009**Trial Court Judge(s):** Hon. James E. Michalik**Trial Court Docket:** 2000-M-0407

Docket Entries

Effective Date	Title
05/13/2010	Emergency Rule 11 petition of David Johnson filed (David Johnson)
05/14/2010	Confidentiality Order
05/17/2010	Request to stay denied order.
05/24/2010	Correspondence to advise that NH Division of Health & Human Services has no interest in the proceedings (Jamie L. Pond).
05/24/2010	Copy of order of May 14, 2010 sent to Daniel D. Lustenberger, Esq. returned-Not deliverable as addressed unable to forward.
05/26/2010	Copies of 5/14 & 5/17/2010 orders resent to PO Box 952, Epping, NH 03042.
05/26/2010	Copy of order of May 17, 2010 sent to Daniel D. Lustenberger, Esq. returned-Not deliverable as addressed unable to forward.
06/09/2010	Petition denied.
06/23/2010	MANDATE ISSUED

CASE SUMMARY

CASE NO. 218-2007-EQ-00196

David W. Johnson v. Albert Wright, Superintendent

§
§
§
§

Location: Rockingham Superior Court

Judicial Officer: Lewis, John M

Filed on: 04/19/2007

CASE INFORMATION

Case Type: **Habeas Corpus**

Case Status: **04/20/2007 Closed**

*No Special Event, Special Status or
Case Disposition Manner in
Sustain; Date from Case Disposition
date in Sustain*

PARTY INFORMATION

Plaintiff	Johnson, David W 104 Gilcreast Road Londonderry, NH 03053	<i>Attorneys</i> WERME, PAULA J, ESQ <i>Retained</i> 603-753-9343(W)
Other	Wright, Superintendent Albert Rockingham County House of Correction 99 North Road Brentwood, NH 03833	

DATE	EVENTS & ORDERS OF THE COURT	INDEX
04/19/2007	Order on Habeas Corpus <i>Filed by: CT; Disp Date: 4/19/2007; Judge: McHugh</i>	
04/19/2007	Memo from Case Screen <i>07-E-0196: No Memo on Case Screen in Sustain; Case Filing Type: Habeas Corpus; Orig. Case Type: 201</i>	
04/20/2007	Order of Court (Judicial Officer: Lewis, John M)	

Complete Document

Can Be Viewed

In Bill Folder

CASE SUMMARY

CASE NO. 670-2006-DM-00312

In the matter of Mike Puiia and Sarah Miner

§
§
§
§

Location: 7th Circuit - Family Division -
Dover

Filed on: 07/06/2006

Case Number History:

CASE INFORMATION

Related Cases

670-2007-DV-00106 (Information Only Cross Reference)

Case Type: Petition for Custody

Case Status: 03/01/2010 Appeal to Supreme Court

Case Flags: Judge Conflict Exhibits

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	670-2006-DM-00312
Court	7th Circuit - Family Division - Dover
Date Assigned	04/04/2011

PARTY INFORMATION

Respondent

Miner, Sarah
11 Elder Osborne Drive
Lee, NH 03824-6660

Lead Attorneys

DeSaulnier, Paula M
Retained
603-436-0776(H)
DeSaulnier & Siegal, P.A.
5 Greenleaf Woods Drive,
Suite 202
Portsmouth, NH 03801-
5463

Child

[REDACTED]

o O
oo

[REDACTED]

o O
oo

Petitioner

Puiia, Michael
192 Winnicutt Road
Stratham, NH 03885

Pro Se
603-380-1718(H)
192 Winnicutt Road
Stratham, NH 03885

Puiia, Michael
192 Winnicutt Road
Stratham, NH 03885
Removed: 06/28/2007
Clerical Error

Pro Se
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Stratham, NH 03885

Agency

Judicial Council
25 Capitol Street
Room 424
Concord, NH 03301

Grandparents

Ambrose, Pamela
124 Caverly Rd

Pro Se

CASE SUMMARY

CASE NO. 670-2006-DM-00312

Payment of Guardian ad litem

09/22/2011

Final Pretrial

Final Pretrial/Structuring Conference re: Finding of Civil Contempt

TARGET DATE	TIME STANDARDS
09/23/2011	Obj - Motion to Amend

HR 50 - AS INTRODUCED

2000 SESSION

00-2838

04/09

HOUSE RESOLUTION **50**

A RESOLUTION authorizing and directing the house judiciary committee to investigate whether cause exists for the impeachment of David A. Brock, chief justice, and/or any other justice of the New Hampshire supreme court.

SPONSORS: Rep. Mirski, Graf 12; Rep Chandler, Carr 1; Rep Burling, Sull 1; Rep. Hess, Merr 11; Rep. Richardson, Ches 12;

COMMITTEE: [committee]

ANALYSIS

This house resolution authorizes and directs the house judiciary committee to investigate whether cause exists for the impeachment of David A. Brock, chief justice, and/or any other justice of the New Hampshire supreme court.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

A RESOLUTION authorizing and directing the house judiciary committee to investigate whether cause exists for the impeachment of David A. Brock, chief justice, and/or any other justice of the New Hampshire supreme court.

1 Whereas, on March 31, 2000 the attorney general of the state of New Hampshire completed an
2 investigation and issued a report entitled "In re: W. Stephen Thayer, III and Related Matters"; and

3 Whereas, said report issued by the attorney general contains information raising concerns about
4 the conduct of David A. Brock, chief justice, and/or any other justices of the New Hampshire supreme
5 court; and

6 Whereas, under Part II, Article 38 of the New Hampshire constitution, a public officer may be
7 removed by impeachment for bribery, corruption, malpractice or maladministration of office, or any
8 combination thereof; and

9 Whereas, under Part II, Articles 17 and 38 of the New Hampshire constitution, impeachments
10 are made by the house of representatives, and then heard and tried by the senate; and

11 Whereas, the conduct reported in the attorney general's report may be cause for the house of
12 representatives to find that impeachment proceedings should be initiated against chief justice
13 David A. Brock and/or any other justice of the New Hampshire supreme court; now, therefore, be it

14 Resolved by the House of Representatives:

15 That the house of representatives authorizes and directs the house judiciary committee, acting
16 as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in
17 accordance with the rules of the house and rules which may be adopted by the committee, to
18 investigate whether grounds exist, based on the investigation and report of the attorney general, and
19 any information arising out of the judiciary committee investigation, for the house of representatives
20 to exercise its constitutional power to impeach chief justice David A. Brock and/or any other justice
21 of the New Hampshire supreme court; and

22 That the committee shall report to the house of representatives such resolutions, articles of
23 impeachment, or other recommendations as it deems proper; and

24 That for the purposes of making such an investigation, the committee is authorized to compel by
25 subpoena the attendance and giving of testimony by any person, and the committee is further
26 authorized to compel the production of such things as it deems necessary. Such testimony may be
27 taken under oath, either in the form of interrogatory, deposition, or by oral testimony at a hearing.
28 Counsel for the committee may be authorized to ask any or all questions on behalf of the committee.
29 For purposes of this section, "things" includes, without limitation, books, records, correspondence,
30 electronic mail, logs, journals, memoranda, papers, documents, writings, reproductions, recordings,

HR 50 - AS INTRODUCED

- Page 2 -

1 tapes, transcripts, printouts, data compilations from which information can be obtained, tangible
2 objects, and other things of any kind; and

3 That such authority of the committee may be exercised by the chairman or by the committee
4 acting as a whole or by subcommittee. Subpoenas or interrogatories so authorized may be issued
5 over the signature of the chairman or any member so designated by the chairman, and may be
6 served by any person designated by the chairman.

HR 51 - AS AMENDED BY THE HOUSE

12july00.....4796h

2000 SESSION

00-2841
09/01

HOUSE RESOLUTION *51*

A RESOLUTION recommending impeachment of supreme court chief justice David A. Brock.

SPONSORS: Judiciary Committee

COMMITTEE: [committee]

ANALYSIS

This resolution recommends that articles of impeachment be brought against supreme court chief justice David A. Brock.

1 Thayer v. Thayer, a divorce case in which W. Stephen Thayer, III, then a justice of the supreme
2 court, was a party. Specifically, chief justice Brock engaged in the following improper conduct:

3 1. On February 4, 2000, chief justice Brock engaged in ex parte communications with justice
4 Thayer and with the other justices, all of whom had been recused, in which he solicited their
5 comments regarding superior court judges to be appointed to the supreme court panel that would
6 hear the appeal of the trial court's judgment.

7 2. On February 4, 2000, chief justice Brock participated in an ex parte communication with
8 justice Thayer in the hallway outside the court's conference room in which the chief justice discussed
9 possible appointments to the supreme court panel that would hear the appeal of the trial court's
10 judgment.

11 That chief justice David A. Brock has committed an impeachable offense warranting trial by the
12 senate.

13 ARTICLE III

14 Chief justice David A. Brock did knowingly testify falsely under oath to the house judiciary
15 committee, with the intention of hindering the HR 50 investigation, with respect to the following
16 material matters:

17 1. On May 19, 2000, he testified that he did not know whether or not a March 3, 2000 letter from
18 his attorney had been sent to the attorney general's office.

19 2. On May 19, 2000, he testified that he did not have certain documents relating to the
20 "Home Gas" investigation when in fact he did have those documents and had reviewed them within a
21 few days before giving testimony.

22 3. On May 19, 2000, and on June 23, 2000, he testified that on February 4 he did not have a
23 conversation in the hallway outside the supreme court conference room with justice Thayer.

24 4. On May 19, 2000, and on June 23, 2000, he testified that he did not make a telephone call to
25 superior court judge Douglas Gray concerning the Home Gas case.

26 That chief justice David A. Brock has committed an impeachable offense warranting trial by the
27 senate.

28 ARTICLE IV

29 During the period beginning with his appointment as chief justice, on or about October 4, 1986,
30 and continuing until on or about April 1, 2000, chief justice Brock engaged in conduct that
31 constituted the impeachable offense of maladministration by permitting and overseeing a practice
32 whereby recused and disqualified justices were permitted to receive draft opinions and to attend case
33 conferences, thereby enabling them to comment on and influence opinions in the cases from which
34 they were recused and disqualified.

HR 52 - AS INTRODUCED

2000 SESSION

00-2844.

01/09

HOUSE RESOLUTION **52**

A RESOLUTION recommending that no article of impeachment be brought against supreme court justice Sherman D. Horton, Jr.

SPONSORS: Judiciary Committee

COMMITTEE: [committee]

ANALYSIS

This house resolution recommends that no article of impeachment be brought against supreme court justice Sherman D. Horton, Jr.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

A RESOLUTION recommending that no article of impeachment be brought against supreme court justice Sherman D. Horton, Jr.

1 Whereas, the New Hampshire house of representatives has directed its judiciary committee "to
2 investigate whether grounds exist...to impeach chief justice David A. Brock and/or any other justice
3 of the New Hampshire supreme court"; and

4 Whereas, the house judiciary committee has conducted such investigation, and it hereby moves
5 that the New Hampshire house of representatives adopt the following resolution relative to justice
6 Sherman D. Horton, Jr; now, therefore, be it

7 Resolved by the House of Representatives:

8 That the judiciary committee has found no clear and convincing evidence that justice
9 Sherman D. Horton, Jr has acted in such a way as to require the house, acting under Part II, Article
10 17 of the New Hampshire constitution, to make and send to the senate an article of impeachment,
11 and accordingly moves that no article of impeachment be brought against justice Sherman D.
12 Horton, Jr.

HR 53 - AS INTRODUCED

2000 SESSION

00-2843

01/09

HOUSE RESOLUTION **53**

A RESOLUTION recommending that no article of impeachment be brought against supreme court justice John T. Broderick, Jr.

SPONSORS: Judiciary Committee

COMMITTEE: [committee]

ANALYSIS

This house resolution recommends that no article of impeachment be brought against supreme court justice John Broderick, Jr.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

A RESOLUTION recommending that no article of impeachment be brought against supreme court justice John T. Broderick, Jr.

1 Whereas, the New Hampshire house of representatives has directed its judiciary committee "to
2 investigate whether grounds exist...to impeach chief justice David A. Brock and/or any other justice
3 of the New Hampshire supreme court"; and

4 Whereas, the house judiciary committee has conducted such investigation, and it hereby moves
5 that the New Hampshire house of representatives adopt the following resolution relative to justice
6 John T. Broderick, Jr; now, therefore, be it

7 Resolved by the House of Representatives:

8 That the judiciary committee has found no clear and convincing evidence that justice
9 John T. Broderick, Jr. has acted in such a way as to require the house, acting under Part II, Article
10 17 of the New Hampshire constitution, to make and send to the senate an article of impeachment,
11 and accordingly moves that no article of impeachment be brought against justice John T. Broderick,
12 Jr.

Testimony

To the House judicial committee

2/20/11

subject: Bill of Impeachment against Master Phil Cross

I'm David Miner, I reside at 114 Mast Rd., Lee, NH. Although I have never been directly involved in a case before Master Cross I have been present at more than 12 hearings held before him in the case of Miner versus Puiia. Sarah Miner is my daughter and of course her two sons are my grandsons. Master Cross is the second master involved in their case which has been ongoing for nearly 3 years, over 20 hearings, with 3 G A L's is now in a state of limbo with the judicial system searching for a judge to handle a show cause that's been pending for months. While I'm sure this is no ordinary case I'm also sure that this type of case happens on more than a very rare occasion.

- While I may not agree with every decision Master Cross has made in this case I believe he has acted as best he could under the constant threat imposed on him by Mr. Puiia. My concern is that the legislature has failed to recognize the position that he and other Masters are placed in when presiding over such a case. I believe that the legislature must look at the child protective side of such a case as this and create a system that would automatically raise a highly contested custody case to a superior court placement. Too often we see the rights of a parent over the rights of the child to be safe. I realize the burden of proof must be high but when the safety of a child is in the hands of the judicial system the court must have the ability to put the child first at the risk of denying a parent their rights. While we should not place a limiting value on the cost of justice I believe there is a great cost to the injustice of not protecting the rights of children to be safe in a timely manner. I believe that child safety should have a much higher priority than keeping a family intact or maintaining contact between children and a parent. If ever there was a point where the scale of justice should be out of balance protecting a child should tip the scale. Master Cross has worked hard to do this with, I'm sure, a great deal of frustration by the limitations our system currently places on him. He and the family court system deserve a great deal of respect for what they do. They deserve more tools to work with. It's my opinion that Master Cross has acted honorably in his position and that the matter of impeachment should be dropped recognizing his work.
- The other matter, though far less important is the cost of such action as this case illustrates. This cost is not only born by the litigants but also by the court system. In this case the cost to the court system must be well into the thousands of dollars with no end in sight. While we should not place a value on the cost of justice I believe there is a great cost to the injustice of not having a conclusive action. It is a great injustice when the defense of the child is not born by the state, but left to a

parent with only two choices. Do I defend my children with everything I can possibly offer, going into debt well beyond the ability to pay, or do I give up and put my children at risk. I ask you, what would your decision be? The system is broke when the court is threatened and unable to execute action in a timely manner.

Thank you for your consideration in this matter and once again I ask that you stop the action before you without delay, Master Cross deserves no less than the full support of your committee and the government of the state.

Respectfully: David Miner

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STATEMENT OF ALAN CRONHEIM
ON BEHALF OF MARITAL MASTER PHILLIP CROSS

My name is Alan Cronheim and I am a lawyer in Portsmouth. It is an honor to appear before you and it is an honor to appear before you as counsel for Marital Master Phillip Cross.

There are two initial matters I would like to address before briefly discussing the cases that appear to be referenced in House Resolution 7.

I am aware that there are those in the legal community who believe it is inappropriate for this Committee and the Legislature to review the performance of a member of the Judiciary - that as a matter of separation of powers - there is a danger when impeachment is forwarded as a solution for those who are dissatisfied with the results of a particular Court case.

It is my view that the consideration of impeachment is a constitutional prerogative of the Legislature pursuant to Part 2, Articles, 18, 38 and 39 of the New Hampshire Constitution. Much as Master Cross follows the law as established by the Legislature and interpreted by the New Hampshire Supreme Court, he too, operates pursuant to the dictates of our State Constitution. Master Cross recognizes it is not merely the prerogative of the Legislature but the responsibility of the Legislature to review the performance of the judiciary in instances where substantial, credible and objectively verified proof demonstrates that a judicial officer has been involved with, in the words of the Constitution, "bribery, corruption, malpractice or maladministration" in office.

Master Cross does not shy away from a review of his performance as a marital master using those standards - knowing that a detailed, thorough and fair review of his record will demonstrate that he has acted pursuant to the law, in a fully competent manner and that impeachment would not be appropriate or supported by the evidence in that record.

The second point that I would like to address, a point which Master Cross could not have stated but for this current process, is that he appreciates the vote of the Legislature rejecting the Bill of Address that had been proposed last year. Much as he appreciated that vote, it came with the frustrating realization that the vote fell largely along party lines. It is my view - and Master Cross' view - that the issues addressed by the Family Court should not be determined by partisan politics. It is our hope that there is not a Republican view of child support obligations and a Democratic view of child support obligations, a Republican view of parental cooperation and a Democratic view of parental cooperation and that, importantly, there not be a Republican view of the duty to follow Court Orders and a separate Democratic view of the responsibility to follow Court Decrees.

Every day, the Family Court deals with passionate parents who disagree as to what is best for their children. I am aware that a number of representatives in the Legislature hear from litigants who have felt unfairly treated by the Family Court and that, as a result, a number of legislators have concerns about the operation of the Family Court System. It is my hope that if your Committee and the House as a whole passes this resolution, those concerns can be set aside as we go forward to allow the facts of this case to be considered in a dispassionate way so that a fair and balanced review of Master Cross' performance can occur. After all, our Constitution requires that this should be an impartial judgment, not of the Family Court

System, but of the performance of Master Cross in particular and identified cases.

I am aware that HR 7 referenced one named case and seems to refer to a second case that was reviewed during the unsuccessful Bill of Address.

Mindful that this is not the place to re-litigate or reconsider those cases, I do want to draw to the Committee's attention two documents.

They each relate to David Johnson's case. Without going into the details of his case, I would like to submit a copy of the 2007 New Hampshire Supreme Court decision in the Johnson case. Mr. Johnson raised four issues on appeal. The Supreme Court affirmed Master Cross' rulings in each of those four instances.

Mr. Johnson subsequently and separately raised the question of his incarceration following a finding of contempt after he chose not to pay a child support arrearage from \$20,000.00 he received in net proceeds from a sale of his home. I am unsure you are aware but the decision to incarcerate Mr. Johnson was made not by Master Cross - but by a supervising District Court Judge. Mr. Johnson challenged the finding of contempt through a Petition for a Writ of Certiorari in the Rockingham County Superior Court. Mr. Johnson's legal effort in that regard failed. This issue, raised in the first numbered paragraph of HR 7, was largely dealt with by Judges in the District and Superior Courts, not by Master Cross himself. I would ask that the 2007 Superior Court Order denying the Writ of Certiorari be made part of the Committee record.

It is important to note that at no time were Master Cross' decisions in the Johnson case reversed by a higher court. I am therefore unsure how the Committee could find he engaged in "malpractice or maladministration" when supervisory courts affirmed

each of his challenged rulings.

In the second case that was the subject of considerable testimony during last year's Bill of Address, Master Cross issued particular rulings, none of which were reversed by a supervisory court. Again, that raises the question as to whether there could be a finding that Master Cross was involved in any form of "malpractice or maladministration" in addressing issues in that case when he committed no errors of law.

The file in the second case, the case involving Michael Puia, has been sealed by the New Hampshire Supreme Court, the Superior Court and the Family Court. As a result, I cannot provide the Committee with these Orders - Orders which would assist the Committee and Master Cross. Mr. Puia, frustrated by results in the Family Court, did bring an action against the mother of his children and her lawyer in regard to issues that had been addressed by the Family Court and Master Cross. It is my understanding that the Superior Court fully rejected Mr. Puia's claims and dismissed his civil suit. I would like the Committee to see that decision - but I cannot provide it to you as a result of the sealing of Mr. Puia's entire files in all three courts.

As others have stated and as Mr. Johnson and Mr. Puia demonstrate, the Family Court deals with difficult, contentious and emotional issues. New Hampshire has established a trial court and an appellate court system. In family cases, these matters are addressed in the first instance by the Family Court and on appeal by the New Hampshire Supreme Court. If the Legislature were to allow impeachment and removal from office in these cases, then in virtually every domestic dispute there could be one party, the losing party, seeking access to the Legislature to act as its audience for the presentation of its views of the correctness of the trial court and appellate court's

decisions. The Judicial System and our Constitution does not establish a Trial Court, the Supreme Court and then an appeal to the General Court.

Master Cross respects your role in reviewing this matter. He is fully prepared to address any of your questions if that becomes necessary. He strongly believes that a considered and impartial review of these cases will demonstrate that he acted in the highest traditions of the Court System, fully and fairly considering the evidence presented, making determinations fully consistent with the law, focusing as he must on the best interest of the children whose lives are so dramatically affected by the decisions of the Family Court.

Testimony in Support of HR7

By: Michael Puiia

February 21, 2011

Dear Honorable Members of the House Judiciary Committee,

I am writing in support of HR7.

Unfortunately I am not able to be present due to working on the west coast at this time. If I were able to present testimony in person it is my strong belief that the Committee would be greatly moved by the repetitive egregious violations of the law by Marital Master Philip Cross and, coupled with testimony from other victims (including testimony from many victims at HA3 last year), to such an extent that it would be apparent that impeachment is the appropriate measure in this matter.

Professional Background:

My testimony is not given based solely on my terrible experiences as a victim of Master Cross but also as someone who is a marital mediator, trained as a guardian ad litem in New Hampshire, a supervised visitation trainer, a co-parenting coach, a professional who worked with children removed by the courts and DCYF, a member of numerous professional organizations related to the judiciary and family law and am a former law enforcement officer. I also collaborate on a national and international level with many judges, lawyers, guardian ad litem, psychologists and others involved in family law and I have personally never witnessed such egregious conduct by any member of the judiciary as that of Marital Master Philip Cross.

Philip Cross has the most Supreme Court Appeals (by far) of any Marital Master in the State:

In a yet-to-be effective effort to protect my family from further abuse by Master Cross, I unfortunately have spent enormous amounts of time researching appeals filed with the Supreme Court from 2005 to 2010. The facts contained in the case files of the Supreme Court confirmed by beliefs that Master Cross has violated many other litigant's rights. The case files revealed that Master Cross has the highest number of appeals of any marital master from any of the family courts in the entire state of New Hampshire.

The research also revealed that Master Cross repeatedly committed identical violations of the law in several cases (denial of due process by changing the purpose of the hearing while the hearing was underway and not giving the parties time to prepare for the new purpose of the hearing). One such Supreme Court case involving Philip Cross was "In the Matter of Denise K. Vorce and Raymond M. Vorce" (Supreme Court docket 2009-0157)).

Supreme Court Appointed Philip Cross to the Ethics Committee Despite all the Problems and Significant Public Outcries:

Despite gross, repeated, and longstanding violations of law by Philip Cross, the Supreme Court appointed Philip Cross to the Advisory Committee on Judicial Ethics as of September 2009—well after the problems were apparent (See NH BAR News, September 18, 2009; "NH Supreme Court Orders"). The purpose of the Ethics Committee is to give advice to other judges and

marital masters on ethical questions raised by judges and masters prior to said judges or masters making orders in the pending case (among other things).

The appointment of Philip Cross to the Ethics Committee amid all his appeals, amid longstanding legislative efforts leading up to the filing of HA3 and amid significant public outcry made it clear that the Supreme Court refused to take action against—and in fact supports and protects—Philip Cross.

It is my belief the judiciary is supporting and protecting Philip Cross despite the judiciary's knowledge of the problems associated with Philip Cross simply to avoid what happened in 1999 and 2000 when the legislature and the judiciary experienced "very dark times" (former Chief Justice Broderick) over judicial matters and lack of effective redress through the Judicial Conduct Committee. Protecting Philip Cross is an attempt to hide the gross violations of the law and maladministration in this matter rather than suffer more "dark times" and have the public be fully informed of the tremendous mischarges of justice that have occurred due to Philip Cross and lack of effective management of Philip Cross as a marital master by his superiors.

It would further reveal that a lot of taxpayer funds have been needlessly wasted by the judiciary due to the high number of appeals involving Philip Cross and high number of hours of court time incurred in the trial court initially by Philip Cross as well as the time taken on remand and/or reversal of Philip Cross's Orders—all because the problem was not handled effectively by the judiciary and continues to be ignored.

The Judicial Conduct Committee's Recent History Supports that Philip Cross Needs to be Impeached:

In a further effort to protect my family from the unchecked and repeated abuses by Master Cross, I spent significant time researching case files at the Judicial Conduct Committee. It became clear that published statistics pertaining to the JCC seemed accurate:

99% of grievances filed with the JCC in 2009 were dismissed

97% of grievances filed with the JCC in 2008 were dismissed

"Judges' Conduct Tough to Challenge", Union Leader, Nancy West, March 14, 2010

The JCC is not a venue, nor is the Supreme Court a venue, that is going to remove Philip Cross from the bench and thereby protect the children, families and citizens from his gross and repeated violations of laws and the Code of Judicial Conduct. The Supreme Court could do so and has patently refused to acknowledge any problems with Philip Cross.

To further support that the JCC and the Supreme Court have not and will not take appropriate action against Philip Cross, the judiciary sent General Counsel Zibbel to testify at HA3 last year regarding Master Cross. General Counsel Zibbel testified to the legislature that "Master Cross didn't do anything wrong...He was just doing his job." The Supreme Court, the JCC and General

Counsel Zibbel know Philip Cross has violated the rights of numerous litigants and they refuse to take appropriate action against him.

Additionally, even attorney Katherine Stearns (former member of the GAL Board and involved in many child and family law matters throughout the state) said as follows regarding the JCC:

“Rejecting so many grievances in the last few years ‘would suggest that there is no recourse to the citizens of New Hampshire when they have a valid concern about a judge violating an ethical rule’ Stearns wrote [Katherine Stearns (Esq)]”

“Judges’ Conduct Tough to Challenge”, Union Leader, Nancy West, March 14, 2010

Summary:

I could testify for hours about the torturous pain, harms, suffering and trauma inflicted upon our family due to Philip Cross and the lack of the judiciary and JCC to take action against him but I understand that such testimony would be given in condensed form at an impeachment hearing. As such I will conclude by saying that the system of checks and balances needs to be implemented because the Judiciary, the Supreme Court and the JCC have refused to protect children, families and citizens from Philip Cross. The legislature is the only remaining hope for scores of victims of Master Cross and the hundreds more that will eventually be Master Cross victims should he remain on the bench.

I thank the Committee for its time and consideration.

Best regards,

/S/

Mike Puiia

603-380-1718

192 Winnicutt Rd

Stratham, NH 03885

mike@childrenfirstmediation.com

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February 22, 2011

Members of the House Judiciary Committee,

I am writing to address House Resolution 7 which is pending before your committee and is scheduled for public hearing today to investigate whether grounds exist to impeach Marital Master Phillip Cross.

I am an attorney licensed to practice in both Maine and New Hampshire and have practiced, almost exclusively in the field of domestic relations, for almost 14 years. During this time, I have had the pleasure of working with Phillip Cross when he was a practicing attorney, as a Guardian ad Litem representing the interests of children in domestic relations cases and recently, as a Marital Master. Without question, Master Cross is one of the most compassionate, patient and understanding members of the judiciary.

I have reviewed the list of grievances contained in HR 7 which were previously testified to during the public hearing in 2010. I regret that I was not aware of that hearing as I, as well as many of my colleagues, would surely have liked to attend and provide comment.

While I recognize the need for litigants to have a method of addressing grievances against members of the judiciary, it is equally important to take into consideration the back-story that many disgruntled litigants often bring to the table. Over the years, I have found that the opinion of the litigants about the judicial process, the judge, the master, the Guardian ad Litem, or even sometimes, their own attorney, is largely outcome-determinative. Essentially, if a client feels as though he or she has "won" or that their spouse has "lost," they are quick to sing their accolades about the process. If, on the other hand, they do not get what they want or the Judge does not agree with them, they are quick to look for someone to blame, other than themselves.

Domestic relations cases are hard. The litigants are emotional, and understandably so. I tell all of my clients that the divorce or custody process is one of the most emotional things that they will ever go through. As you consider the allegations raised against Master Cross, I ask you to keep in mind the acrimony that exists in virtually all of these cases.

The allegations that arise between the parties in a domestic relations case and are considered by the Court strike a very personal cord in all of the litigants. Many times, one or both parents are claiming that the other has issues with parenting the children, has engaged in domestic violence, has issues with substance abuse, etc. The Masters and Judges sometimes have a near impossible task of having to determine which allegations are legitimate. Based on my experience, I have no doubt that Master Cross does his best to evaluate the evidence in every case he hears and render a fair and equitable decision.

During the course of my practice, I have had occasion to appear before many different Judges and Masters (in New Hampshire) and Magistrates (In Maine). Given that my office is located in Portsmouth, I have the pleasure of routinely appearing before Marital Master Cross. I have represented both men and women in his courtroom in a variety of different proceedings – parental rights actions involving unmarried parents, divorce and post-divorce matters, and domestic violence proceedings. I can honestly say that I have not witnessed any bias or predisposition toward either gender, nor have I witnessed any mistreatment toward anyone. Instead, what I have come to appreciate is the fact that Master Cross listens carefully to both parties, that he is patient and respectful both to counsel and unrepresented individuals, that he renders decisions after carefully considering all of the evidence, and most importantly, after taking into consideration what is in the best interest of the children involved.

I'm sure that there are critics who can say that Master Cross has not always gotten it right. Master Cross himself may even agree. However, I am dismayed to learn that there are those who are claiming to have been treated unfairly, attacking his reputation and commitment to the bench and seeking his removal. Although I may not always agree with his decisions and have not always achieved the outcome my clients have hoped, I have always found Master Cross to be fair.

Judicial officers are not infallible, they are human. In any given day, every Judge and Marital Master has the task of attempting to resolve disputes between litigants who come from a variety of backgrounds and walks of life. Although each case is unique and is very fact-specific, they all have one thing in common ... the parties are in crisis. By the time the parties arrive in Court, what they are seeking is sometimes nothing short of a miracle. They are looking to have the Court address a dispute that they have not been able to remedy themselves. There is almost always a history of discord between the parties with at least one party feeling that he or she has been wronged. Given the nature of the process, when they leave the courtroom, at least one of the parties (but sometimes both) is frequently left feeling that they did not get what they deserve. The party paying support almost always feels like they are required to pay too much; the party receiving the support generally feels like it is not enough. If they cannot agree upon a schedule for parenting time with their children, and the court is left to decide, the parties almost always feel like the Court did not get it right. And maybe the court does not always "get it right" ... but Master Cross has a reputation for being very deliberative and thoughtful and above all, very concerned about the effect of his decisions on the children in the cases he decides. The same was true when he was a Guardian ad Litem, making recommendations to the Court on behalf of the children he served and it remains true now.

I give the following examples, which are two (2) excerpts from decisions rendered by Master Cross in a parental rights and responsibilities matter. This was a very litigious case which was initiated when the child was born and spanned the course of 9 years.

“On March 12, 20XX, the matter came forward for a hearing on the parties’ Motions to Modify, at which the Guardian ad Litem (GAL) appeared, as did both parties, with counsel. After consideration of the offers of proof, pleadings and the file, the court orders:

- 1. The court is encouraged by and commends the parties for their efforts today to try to reach a temporary agreement on the parenting issues. They have a significant history of discord (nearly 9 years’ worth) and each raises valid and important concerns about the other; but at least for a short time during and after the hearing, they were able to put some of their personal issues aside and meaningfully discuss what modifications should be made to the current schedule of parenting time in order to help their child, XXX. The court recognizes that they do not have an easy task trying to reach any agreement about the parenting issues, but at least they now appear to be talking about them. The court has listened carefully to their concerns and has tried to accommodate them as best it can in the accompanying Temporary Parenting Plan.”*

“On July 20, 20XX, the Guardian ad Litem (GAL) and parties (with counsel) appeared for a hearing on the Petitioner’s Motion to Modify (child support) and a Review Hearing on the Parenting Plan. After consideration of offers of proof, exhibits, pleadings and the file, the court orders:

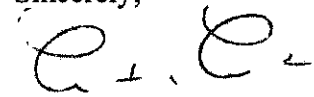
- 1. The parties’ minor child, XXX, who is now 9 years old, is still too involved in her parents’ continuing acrimony which, unfortunately, has imposed completely unrealistic and artificial restrictions on her and them – all of their words and actions are examined “under a microscope,” no one can make a mistake and no one dares to admit having done anything less than perfectly because the consequences are too severe – the offending party is “bludgeoned” in court. This acrimony has created an environment that is harmful to the parties and especially to XXX. In an effort to improve the circumstances for XXX, the court modifies the current schedule of parenting time. The schedule has been too restrictive, for too long and has harmed XXX’s ability to form a close bond with her father. ... The court understands the Petitioner’s worry that XXX is not ready for the above modifications, but the current conditions for the Respondent’s parenting time are interfering with XXX’s ability to have a more normalized relationship with her father. He may never have the same relationship with XXX as the Petitioner has, but their relationship is nevertheless critically important for XXX.”*

In reviewing these orders, I should note that I did not “win” this case. My client was opposed to the modification which was ultimately granted by Master Cross. However, despite the fact that she did not feel as though she “got everything she wanted,” overall, she respected his decision because she felt that she was treated fairly by Master Cross, that she had her day in court, and that he was making this Order based on what he felt was best for the child. In my opinion, we cannot ask for more from our judiciary.

I will conclude by saying that we are lucky to have a man of Master Cross' dedication and character on the bench. It is because of Masters like him that I am proud to be a member of the legal community.

Thank you for your time and consideration of this information.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Christo', with a stylized flourish at the end.

Celeste M. Christo, Esquire

To whom it may concern:

I am writing to express my support for Marital Master Phil Cross. My experience in his court has been nothing short of professional, fair and unbiased. He demonstrates evenhandedness, and interest in the law. His sincere concern in hearing both parties in his court and great awareness for everyone's perspective is obvious to even the casual observer.

Personally, I have had the occasion to appear before Master Cross twice for post-divorce hearings. This is not an easy process due to elevated emotions, and the negative feelings that can occur between a couple experiencing divorce. I found Master Cross to be compassionate, intelligent and genuinely concerned as to how both parties were coping. Even when the ruling did not result fully in my favor, I felt that the overall decisions made were fair and balanced.

As a newly certified mediator myself, I look forward to working in Portsmouth Family Court with Master Cross. It would be very regrettable to remove such a capable, fair minded and valuable master from the Court and a real loss for the community.

Thank You,

Kim Patent Gravina
23 Katie Lane
Hampton, NH

Dean Strang
15 Acadia Avenue
Hampton, NH 03842

February 20, 2011

To Whom It May Concern:

I am writing this letter in support of Master Cross. Although I never wished to be in divorce court, I encountered Master Cross initially during a Settlement Conference on October 7, 2010 in an effort to resolve our differences without the need for a trial. Ultimately, attempts at settlement failed and we eventually had a contested final divorce hearing. During that initial meeting and the subsequent hearing and trial on October 15, 2011, I felt that Master Cross's decisions were fair and unbiased. I was encouraged that the court process was so thorough and I was allowed to present my evidence and point of view without feeling rushed or judged prior to the presentation of evidence.

Master Cross presented himself as an open-minded and fair judge and listened to the information provided by both attorneys. He conducted himself in a professional manner and showed clear understanding of the information that was presented to him both by myself and my lawyer, as well as that of my ex-wife. I appreciate the fact that Master Cross based his final decision on the proven evidence that we gave him. Regardless of the final outcome, I was encouraged about the positive nature of the NH Family Court System by Master Cross's demeanor and the manner in which he conducted the proceedings within his court room. In my opinion, Master Cross is a fair and unbiased advocate for families in New Hampshire and Rockingham County and his removal from the bench would be a loss to the judicial system and the community.

Please do not hesitate to contact me if you need any further information.

Sincerely,

Dean Strang

dstrang@smartchicken.com

603-601-6564

Shawn Crapo
P.O. Box 491
Rye Beach, NH 03871

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(603) 379-8068 Fax
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February 22, 2011

To whom it may concern,

I have personally appeared before Master Cross for a First Appearance on March 18, 2009 and a Final Pretrial on December 3, 2009. On BOTH occasions, I felt that both my wife and I were treated fairly. We were led through an overview of the process on the first occasion, with a clear, concise description of what we could expect while navigating through the divorce proceedings. On the second occasion, we were also treated professionally and with compassion for our circumstances.

I can understand that the entire divorce process and the reasons that individuals or couples appear in Master Cross's court are not always without angst, contention, confusion, and sometimes dissatisfaction. I would imagine, that upon further investigation, the cause of any of these adverse notions are brought upon by the parties, not the Court Officers.

Our situation was able to be brought to fruition through Mediation and a mutual final agreement that was presented and signed off on by Master Cross. Others may not have the same uncomplicated path. Regardless, I was witness to some other proceedings in the courtroom that were not as calm, with participants shouting at each other and having to be calmed down. In all of these situations, Master Cross seemed to be the voice of calm reason, explaining things clearly, calmly, and neutrally.

I find it unfortunate that some or a group of individuals feel that Master Cross should be removed or sanctioned. I would venture to guess that a full review of all circumstances will reveal that these individual cases had their own inherent issues that were neither furthered or instigated by the actions of Master Cross. Statistically and realistically, it could be expected that for every 100 or so cases, there will be a few where someone feels jilted by the system whether it is true or not. For those few to blame the system may be true or not, but the remedy is likely best found within themselves, rather than seeking out changes in Court Officers.

Thank you for your time and consideration of my points,

Shawn Crapo
Rye Beach, NH

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case Nos. 2006-0018 and 2006-0325, In the Matter of Jennifer L. Johnson and David W. Johnson, the court on March 6, 2007, issued the following order:

Having considered the briefs filed by the parties and the record submitted on appeal, we conclude that oral argument is unnecessary for the disposition of this appeal.

The appellant, David W. Johnson, claims that the trial court erred in: (1) giving the appellee, Jennifer L. Johnson, ultimate sole decision-making authority concerning the parties' minor child; (2) refusing to admit and consider a DCYF ombudsman's report and corrected report; (3) increasing his child support obligation; (4) failing to appoint a guardian *ad litem* for the parties' child; and (5) holding a hearing on the appellee's motion for increased parenting time on October 31, 2005, when the motion was filed on October 21, 2005.

The appellant first argues that the trial court erred when it gave the appellee sole decision-making authority concerning the child. The trial court has wide discretion in matters involving custody. In the Matter of Kosek & Kosek, 151 N.H. 722, 724 (2005). The court's overriding concern in structuring custody and visitation matters is the best interests of the child. *Id.* We review the trial court's decision under our unsustainable exercise of discretion standard. *Id.* This means that we review only "whether the record establishes an objective basis sufficient to sustain the discretionary judgment made." In the Matter of Lockaby & Smith, 148 N.H. 462, 465 (2002) (quotation omitted). Based upon our review of the record, we conclude that the trial court did not unsustainably exercise its discretion in this regard.

The appellant next argues that the trial court erred by declining to admit and consider a DCYF ombudsman's report and a corrected report. We review a trial court's decision on the admissibility of evidence under an unsustainable exercise of discretion standard. Figlioli v. R.J. Moreau Cos., 151 N.H. 618, 626 (2005). To meet this standard, the appellant must demonstrate that the trial court's ruling was clearly untenable or unreasonable to the prejudice of his case. *Id.*

In Case Nos. 2006-0018 and 2006-0325, In the Matter of Jennifer L. Johnson and David W. Johnson, the court on March 6, 2007, issued the following order:

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The record reveals that the trial court admitted the final two pages of the report, which contained DCYF's recommendations. As to the body of the report, which concerned the child's medical records, the court stated: "I'm not interested in what DCYF thought when it reviewed the records because I'm going to do that myself, so" This was not an unsustainable exercise of discretion.

The appellant next contends that the trial court erred in increasing his child support obligation. The trial court increased the appellant's child support after finding that he was voluntarily underemployed and attributing income to him in the amount of \$2,000.00 per month.

Whether a party is voluntarily unemployed is a question for the fact finder, whose decision will not be disturbed on appeal if supported by evidence in the record. See In the Matter of Donovan & Donovan, 152 N.H. 55, 58-59 (2005). "Trial courts have broad discretion in reviewing and modifying child support orders." In the Matter of Forcier & Mueller, 152 N.H. 463, 464 (2005) (quotation and citation omitted). We will overturn a child support modification order "only if it clearly appears that the trial court engaged in an unsustainable exercise of discretion." *Id.*

Based upon our review of the record, we conclude that there is evidence to support the trial court's determination that the respondent was voluntarily underemployed and its decision to attribute income to him in the amount of \$2,000.00 per month. The trial court, therefore, did not unsustainably exercise its discretion by increasing the respondent's child support obligation.

The appellant next argues that the trial court erred in refusing to appoint a guardian *ad litem* shortly before the January 2006 hearing. We conclude that the trial court did not err in this respect. See In the Matter of Fulton & Fulton, 154 N.H. ___, ___, 910 A.2d 1180, 1186 (2006).

In Case Nos. 2006-0018 and 2006-0325, In the Matter of Jennifer L. Johnson and David W. Johnson, the court on March 6, 2007, issued the following order:

Page 3 Of 3

The appellant's final issue on appeal is that the trial court erred in considering the appellee's motion for increased parenting time at the October 31, 2005, hearing when it was filed on October 21, 2005. As the appellant failed to raise this issue to the trial court, it is not preserved for our review. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004). Moreover, as it is not part of his notice of appeal, it is deemed waived. See Wilder v. City of Keene, 131 N.H. 599, 605 (1989).

Affirmed.

Broderick, C.J., and Dalianis, Duggan and Galway, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:

Derry Family Division #2000-M-0407

✓ Martial Master Philip D. Cross

Martial Master Bruce DalPra

Honorable Lucinda V. Sadler

Francis G. Murphy, Esq.

Paula Werme, Esq.

Timothy M. Cunningham, Esquire

Case Manager 2006-0325

Donna Craig, Supreme Court

File

THE STATE OF NEW HAMPSHIRE
ROCKINGHAM COUNTY

SUPERIOR COURT

In the Matter of Jennifer Johnson and David Johnson

Docket No: 07-E-0148

ORDER

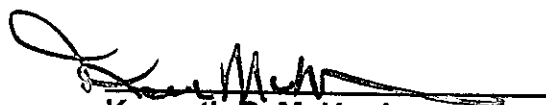
At approximately 4:00 p.m. on Friday March 16, 2007 the plaintiff filed the within action. It is a Petition for Writ of Certiorari and a Notice of Appeal. Accompanying the Petition was Emergency Ex Parte Motion to Stay Order of the Derry Family Division. This Court had its first opportunity to review the pleadings on March 19, 2007.

After reviewing all of the pleadings filed, the Court not only denies the petitioner's Emergency Ex Parte Motion to Stay Order but also denies the petitioner's Petition for Writ of Certiorari. The pleadings filed almost exclusively deal with the issue of whether or not the child support order against David Johnson was reasonable or whether David Johnson has the present ability to pay said Order. However a review of the decision of the Derry Family Division suggests that that is not the reason behind the Order which is objectionable to the respondent. The issue is not the respondent's present ability to pay child support; rather the issue is the respondent's blatant failure to pay an outstanding child support arrearage with the net proceeds that he received from the sale of the parties' home. Given the contempt of the Derry Family Division Order, which in no way is explained in the petitioner's pleadings filed with this Court, the Court finds that there is no merit to the petitioner's Petition for Writ Certiorari and therefore said petition is denied. The Court reaffirms the Order of the Derry Family Division in that the respondent must pay

\$8,050.00 today or a capias shall issue for this arrest with bail set in the amount of \$8,050.00, cash only.

So Ordered.

DATED: March 19, 2002


Kenneth R. McHugh
Presiding Justice

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HOUSE RESOLUTION 7

BILL TITLE: directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

DATE: March 1, 2011

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL Interim Study (Please circle one.)

Moved by Rep. Potter

Seconded by Rep. Weber

Vote: 4-11 (Please attach record of roll call vote.)

Motions: OTP OTP/A, IFL, Interim Study (Please circle one.)

Moved by Rep. Sorg

Seconded by Rep. Andolina

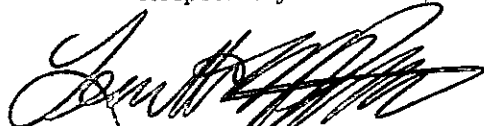
Vote: 10-5 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,



Rep. Lennette M. Peterson, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HR 7

BILL TITLE: directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

DATE: 3-1-11

LOB ROOM: 208

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Potter*

Seconded by Rep. *Weber*

Vote: *4-11* (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Sorg*

Seconded by Rep. *Andolina*

Vote: ~~10-5~~ (Please attach record of roll call vote.)

10-5

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Lenette Peterson, Clerk

JUDICIARY

Bill #: HR 7 Title: _____

PH Date: 2 / 22 / 11

Exec Session Date: 3 / 1 / 11

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Rowe, Robert H, Chairman	<i>abstain</i>	—
Sorg, Gregory M, V Chairman		✓
Souza, Kathleen F	—	—
Hagan, Joseph M		✓
Silva, Peter L		✓
Andolina, Donald C		✓
Giuda, J. Brandon		✓
LaCasse, Paul D		✓
McClarren, Donald B		✓
Murphy, Brian JX		✓
Palmer, Barry J		✓
Peterson, Lenette M		✓
Tregenza, Norman A		✓
Wheaton, Gary W	—	—
Wall, Janet G	✓	
Potter, Frances D	✓	
Weber, Lucy M	✓	
Watrous, Rick H	✓	
	<i>4</i>	<i>11</i>
TOTAL VOTE:		

JUDICIARY

Bill #: HR 7 Title: _____

PH Date: 2/22/11 Exec Session Date: 3/1/11

Motion: OTP Amendment #: _____

MEMBER	YEAS	NAYS
Rowe, Robert H, Chairman		
Sorg, Gregory M, V Chairman	✓	
Souza, Kathleen F	—	—
Hagan, Joseph M	✓	
Silva, Peter L	✓	
Andolina, Donald C	✓	
Giuda, J. Brandon	✓	
LaCasse, Paul D	✓	
McClarren, Donald B	✓	
Murphy, Brian JX	✓	
Palmer, Barry J		✓
Peterson, Lenette M	✓	
Tregenza, Norman A	✓	
Wheaton, Gary W	—	—
Wall, Janet G		✓
Potter, Frances D		✓
Weber, Lucy M		✓
Watrous, Rick H		✓
	10	5
TOTAL VOTE:		

Committee Report

REGULAR CALENDAR

March 9, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on JUDICIARY to which was referred HR 7,

AN ACT directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Gregory M. Sorg

FOR THE MAJORITY OF THE COMMITTEE

MAJORITY COMMITTEE REPORT

Committee: JUDICIARY
Bill Number: HR 7
Title: directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.
Date: March 9, 2011
Consent Calendar: NO
Recommendation: OUGHT TO PASS

STATEMENT OF INTENT

By passing House Resolution 7, the House would direct the Judiciary Committee to investigate and report back to the House as to whether grounds exist for the House to impeach Marital Master Phillip Cross. The Committee's review to this point has been limited to determining whether the allegations stated in the resolution and testified to at the public hearing met the relatively low standard of reasonable suspicion, thereby justifying further, formal investigation. The majority concluded that they did. In arriving at this conclusion, the Committee was sensitive to the need to distinguish between disagreements with the subjective findings and recommendations of Master Cross - which go to the essence of the judicial function and not properly reviewable by the elected branches of the government - and violations of objective rules of law and procedure that a magistrate is bound to follow, and which are properly reviewable. In considering the latter, the Committee was additionally sensitive to the need to distinguish between the occasional error that only proves that a magistrate is human and a pattern of apparent lapses that is indicative of malpractice or maladministration in office. The majority concluded that a reasonable showing of such a pattern had been made, which included: (1) granting one party ex parte relief and never scheduling a contested hearing to give the other party an opportunity to respond; (2) issuing conflicting orders to a party that made it impossible for him to comply with one without violating the other; (3) giving notice of a hearing to consider one subject and then considering an entirely different subject at the hearing; and (4) altering a stipulation filed by the parties and forwarding the altered stipulation as the court's final order without first giving the parties an opportunity to review and reconsider it. In addition, there was testimony that decisions made by Master Cross have the highest rate of appeal than those of any marital master and that more judicial conduct complaints have been filed against him than any marital master. Finally, the Committee was presented with evidence of the ineffectiveness of the judicial branch's internal Judicial

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HR 7, directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court. **OUGHT TO PASS.**

Rep. Gregory M. Sorg for the **Majority** of JUDICIARY. By passing House Resolution 7, the House would direct the Judiciary Committee to investigate and report back to the House as to whether grounds exist for the House to impeach Marital Master Phillip Cross. The Committee's review to this point has been limited to determining whether the allegations stated in the resolution and testified to at the public hearing met the relatively low standard of reasonable suspicion, thereby justifying further, formal investigation. The majority concluded that they did. In arriving at this conclusion, the Committee was sensitive to the need to distinguish between disagreements with the subjective findings and recommendations of Master Cross - which go to the essence of the judicial function and not properly reviewable by the elected branches of the government - and violations of objective rules of law and procedure that a magistrate is bound to follow, and which are properly reviewable. In considering the latter, the Committee was additionally sensitive to the need to distinguish between the occasional error that only proves that a magistrate is human and a pattern of apparent lapses that is indicative of malpractice or maladministration in office. The majority concluded that a reasonable showing of such a pattern had been made, which included: (1) granting one party ex parte relief and never scheduling a contested hearing to give the other party an opportunity to respond; (2) issuing conflicting orders to a party that made it impossible for him to comply with one without violating the other; (3) giving notice of a hearing to consider one subject and then considering an entirely different subject at the hearing; and (4) altering a stipulation filed by the parties and forwarding the altered stipulation as the court's final order without first giving the parties an opportunity to review and reconsider it. In addition, there was testimony that decisions made by Master Cross have the highest rate of appeal than those of any marital master and that more judicial conduct complaints have been filed against him than any marital master. Finally, the Committee was presented with evidence of the ineffectiveness of the judicial branch's internal Judicial Conduct Committee to police and discipline its own members. On the basis of the foregoing, the majority was persuaded that the aspiration of Article 8, Part I of the New Hampshire Constitution - that all the magistrates and officers of the government are accountable to the people - cannot be fulfilled in this case without a formal investigation of Marital Master Cross. **Vote 10-5.**

Original: House Clerk
Cc: Committee Bill File

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Vote 10-5

Rep. Gregory M. Sorg
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

Majority

Draft Judiciary Committee Report

HR 7 Ought to Pass

Rep Gregory M. Sorg for the Majority of Judiciary:

By passing House Resolution 7, the House would direct the Judiciary Committee to investigate and report back to the House as to whether grounds exist for the House to impeach Marital Master Phillip Cross. The Committee's review to this point has been limited to determining whether the allegations stated in the resolution and testified to at the public hearing met the relatively low standard of reasonable suspicion, thereby justifying further, formal investigation. The majority concluded that they did. In arriving at this conclusion, the Committee was sensitive to the need to distinguish between disagreements with the subjective findings and recommendations of Master Cross - which go to the essence of the judicial function and not properly reviewable by the elected branches of the government - and violations of objective rules of law and procedure that a magistrate is bound to follow, and which are properly reviewable. In considering the latter, the Committee was additionally sensitive to the need to distinguish between the occasional error that only proves that a magistrate is human and a pattern of apparent lapses that is indicative of malpractice or maladministration in office. The majority concluded that a reasonable showing of such a pattern had been made, which included: (1) granting one party *ex parte* relief and never scheduling a contested hearing to give the other party an opportunity to respond; (2) issuing conflicting orders to a party that made it impossible for him to comply with one without violating the other; (3) giving notice of a hearing to consider one subject and then considering an entirely different subject at the hearing; and (4) altering a stipulation filed by the parties and forwarding the altered stipulation as the court's final order without first giving the parties an opportunity to review and reconsider it. In addition, there was testimony that decisions made by Master Cross have the highest rate of appeal than those of any marital master and that more judicial conduct complaints have been filed against him than any marital master. Finally, the Committee was presented with evidence of the ineffectiveness of the judicial branch's internal Judicial Conduct Committee to police and discipline its own members. On the basis of the foregoing, the majority was persuaded that the aspiration of Article 8, Part I of the New Hampshire Constitution - that all the magistrates and officers of the government are accountable to the people - cannot be fulfilled in this case without a formal investigation of Marital Master Cross.

Vote: 10-5

R/S

REGULAR CALENDAR

March 9, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on JUDICIARY to which was referred HR 7,

AN ACT directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

Having considered the same, and being unable to agree with the Majority, report with the following Resolution:

RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Lucy M. Weber

FOR THE MINORITY OF THE COMMITTEE

MINORITY COMMITTEE REPORT

Committee: JUDICIARY
Bill Number: HR 7
Title: directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.
Date: March 9, 2011
Consent Calendar: NO
Recommendation: INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The grounds for impeachment under the New Hampshire Constitution are bribery, corruption, malpractice or maladministration. There have been only two such proceedings against judges in the entire history of New Hampshire. In neither of the two proceedings was the judge convicted and removed from the bench.

The allegations against Marital Master Philip Cross arise out of three of the most contentious divorce proceedings in the state. Most of the specific instances alleged in HR 9 have been shown to be either untrue or mischaracterizations. Other actions have already been appealed to the NH Supreme Court, which has upheld the actions of Master Cross. Even if the substance of the allegations were entirely true, it might be grounds for reversal on appeal or for proceedings by the Judicial Conduct Commission, but it does not come close to the grave level of misconduct required for impeachment. For this reason alone, HR 7 should be voted Inexpedient to Legislate.

During the discussion of this resolution, it was stated that the resolution should go forward as a vehicle for the legislature to investigate the court system. The legislature may study the workings of the court system at any time, without resorting to impeachment and thereby holding one individual's future hostage to the effort.

Despite the fact that the only specific instances of wrongdoing are alleged against Master Cross, HR7 also gives the committee the sweeping power to investigate "any justice of the New Hampshire superior court," without stating any basis at all on which to do so. This is a breach of due process of staggering proportions.

The minority is deeply concerned with other aspects of this resolution. The resolution carries with it no fiscal note. The resolution gives the committee the unlimited authority to subpoena the attendance and testimony of persons and the production of records. The committee may take depositions or prepare interrogatories. These actions may be taken by the committee or counsel for the

Original: House Clerk
Cc: Committee Bill File

committee. Presumably, then, the committee may choose to use the services of House Counsel or to employ outside counsel. Every one of these actions is expensive. All of the completely unfettered authority given to the committee may be exercised not only by the committee acting as a whole, but also by chairman of the committee, acting alone. Nowhere in the resolution is there any limitation whatsoever on how much may be spent in the conduct of this investigation. We heard that cost of the investigative phase of the proceeding against Justice Brock in 2000 exceeded \$100,000. The impeachment and trial cost many times that amount. The minority believes it irresponsible to launch an investigation with no limits on expenditure.

Rep. Lucy M Weber
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HR 7, directing the house judiciary committee to investigate whether grounds exist to impeach marital master Phillip Cross and/or any justice of the New Hampshire superior court.

INEXPEDIENT TO LEGISLATE.

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The minority is deeply concerned with other aspects of this resolution. The resolution carries with it no fiscal note. The resolution gives the committee the unlimited authority to subpoena the attendance and testimony of persons and the production of records. The committee may take depositions or prepare interrogatories. These actions may be taken by the committee or counsel for the committee. Presumably, then, the committee may choose to use the services of House Counsel or to employ outside counsel. Every one of these actions is expensive. All of the completely unfettered authority given to the committee may be exercised not only by the committee acting as a whole, but also by chairman of the committee, acting alone. Nowhere in the resolution is there any limitation whatsoever on how much may be spent in the conduct of this investigation. We heard that cost of the investigative phase of the proceeding against Justice Brock in 2000 exceeded \$100,000. The impeachment and trial cost many times that amount. The minority believes it irresponsible to launch an investigation with no limits on expenditure.

Original: House Clerk
Cc: Committee Bill File

HR 7—Minority Blurb
Recommendation—Inexpedient to Legislate.

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During the discussion of this resolution, it was stated that the bill should go forward as a vehicle for the legislature to investigate the court system. The legislature may study the workings of the court system at any time, without resorting to impeachment and thereby holding one individual's future hostage to the effort.

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Rep. Lucy McVitty Weber
217 Old Keene Road

