

*A Report on the Butler County Juvenile  
and Domestic Relations Courts:*

# **A Culture of Secrecy, Fear and Judicial Abuse**

**Prepared by County Commissioner  
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## Preface

The Domestic Relations and Juvenile Courts of Butler County foster a culture of secrecy, fear and judicial abuse that violates the most fundamental and sacred rights guaranteed by our nation's Constitution — the rights of due process of the laws. Those who are most directly affected by decisions of these courts — parties to the actions — are routinely excluded from court proceedings and deliberations, told to wait outside the hearing room in a hallway while their lives, personal property, children and homes are divided up by strangers.

The world of juvenile and domestic relations is a secret world where the courts treat public scrutiny with open contempt and hostility. The pretense for this secrecy is to protect families from embarrassing disclosures about their personal and private lives. The real function, however, is to protect the court from public scrutiny and oversight.

Nowhere is this judicial hypocrisy more dramatically illustrated than in the Court Rules of the Domestic Relations Court. These rules require placing personal information about people's private lives in public records, which are easily available on the Internet, while blocking disclosure of what judge is assigned to the case.

On one hand, DR Rule 1: (B) requires that "All pleadings shall contain the names, addresses, dates of birth and Social Security numbers of both parties and all children of the marriage. Pleadings shall also contain the telephone numbers of all parties." This rule requires that *every* document filed in a domestic relations case must contain some of the most private information about a person's life. Under state law, all pleadings and submissions are public documents unless specifically sealed by the court.

On the other hand, a court order filed by Judge Leslie Spillane on March 28, 2002, prohibits the Clerk of Courts from "making any assignment of cases to judges in this Division (Domestic Relations Court)." In an April 3, 2002, letter to the Clerk of Courts, Judge Spillane threatened litigation if the Clerk of Courts Office continued to make assignment of cases to judges in the Domestic Relations Court.

Under Ohio law, the assignment of cases is supposed to be random and not subject to manipulation. The Clerk of Courts routinely assigns cases in the General Division to judges. The effect of Judge Spillane's order is twofold: First, it opens the assignment process to secret manipulation; and second, the Domestic Relations Court does not forward to the Clerk's office the name of the judge the court assigns to hear the case. There is no official public document attesting to the assignment.

The net result is that the public can go to the Clerk's office or web site and get a person's Social Security number, dates of birth, unlisted telephone number and a host of other personal information, but cannot get the name of the judge assigned to the case. The personal information is not protected, but providing the identity and assignment of the judge is prohibited by a court order and the practices of the Domestic Relations Court.

Hence, under Court Rules and procedures, the Clerk of Courts is required to make an individual's most private information fully available to the public, but is prohibited from publishing the identity of the judge assigned to the case. How does excluding the name of the judge assigned to the case promote due process or the public interest?

Juvenile Court is even worse. It handles this issue of public and individual access to court documents in a different way — it blocks all public access to any document. All of the Juvenile Court records are sealed, and even parties to the cases have to clear formidable hurdles to get access to court records — access is time-consuming and costly and as a practical matter is virtually nonexistent.

How can anyone be proud of a justice system that works in the shadows? How can those who have dedicated their lives to upholding the laws of the State of Ohio and the Constitution of United States tolerate a system that is so offensive to the America system of justice?

Where is the outrage? The answer: The outrage is muted by an incestuous network of insiders who are spared the crucible of public scrutiny by a system that operates behind locked doors, disciplined by a real fear of being punished if the members ever break ranks and rail against the injustice they see daily.

This report chronicles and documents numerous practices and procedures that act as barriers to due process. My prayer is that, by shining the light of public disclosure on these and other abuses, changes will be made in court practices — changes that will respect the rights of our citizens and uphold the principles of justice envisioned by our founding fathers.

Michael A. Fox  
Butler County Commissioner

***“Public trust depends on the openness and accountability of courts and their proceedings. Access serves as a check against misconduct, ineptitude, and corruption in criminal trials and promotes public confidence that justice is being fairly administered by judges and prosecutors. Institutional integrity is at risk whenever openness yields to secrecy, no matter how well intentioned.”***

Judge Barb Gorman, Montgomery County, Ohio

## **Introduction**

Why would a County Commissioner concern himself with a matter under the jurisdiction of the courts? The answer is simple: As a citizen and as a public official, I care about redressing injustice when I see it. In this age of cynicism it probably sounds corny, but it's true. As a County Commissioner, I have a voice in setting the budget for all county agencies. The courts, justice system and law enforcement account for more than 60 percent of our general fund expenditures. When they provide lousy public service or deny our citizens their basic rights, they cost the taxpayers dearly — in human terms and in wasted money.

I take no pride in providing public funds to government instrumentalities such as the Domestic Relations Court and the Juvenile Court knowing that these resources are used to deny residents the fundamentals of due process. I have a choice: I can sit back and say nothing — watching the abuses continue — or I can speak up and call attention to the problem in hope of bringing change.

I have no ax to grind, other than my intolerance for injustice. Thankfully, I have had no direct experience with any domestic relations court or juvenile court. I speak without caveat or hint of distress with some court decision about a case in which I was involved. I simply consider how I would feel if I endured what so many of our citizens endure every day in these two courts. I would not like it, not one bit, nor do those who endure it.

This report examines procedures, practices and problems in Butler County's family courts: the Domestic Relations Division and the Juvenile Division of the Butler County Court of Common Pleas. Although the report reflects years of court actions, the issue received immediacy with the disclosure that Dr. Roger Fisher, a psychologist who had provided expert testimony in both courts for many years, surrendered his license to the State of Ohio.

My inquiries into the situation drew a heated reaction, particularly after a January meeting at which citizens raised complaints about the courts and a letter from the Butler County Board of Commissioners asking the judges to exact penalties for false or misleading testimony. The Butler County Bar Association circulated a letter, curiously treating the County Commission's request for effective court rules as an assault on the judges.

The subsequent reaction from the two court divisions has been markedly different, and the difference is instructive.

The administrative judge of the Juvenile Court, David Niehaus, reacted by inviting me to meet with him and his colleague, Judge Ronald Craft, to discuss ways the court can improve its procedures and make them more transparent to ordinary citizens. I am hopeful about the prospects for that kind of effort.

Similarly, Judge Sharon Kennedy invited me to meet with her and exchange ideas on how to improve the Domestic Relations Court process. Her court is open and accessible to parties to actions to participate and be present when their case is being discussed.

Unfortunately, the administrative judge of the Domestic Relations Court, Leslie Spillane, governs the actions of the court's magistrates. Judge Spillane reacted by writing newspaper columns and letters denying the problems and castigating the Board of County Commissioners for the temerity to suggest court reforms.

Then she went to the Butler County Auditor's Office and demanded the travel expense records for all three commissioners, the county administrator and my assistant. Not only did she request the records of my past travel, but she also requested copies of my future travel, and she wrote another newspaper column, this time presenting serious errors of fact in an excursion into side issues. Whatever the merit of her opinion on the subject, she betrayed her own animus by exaggerating and misstating facts that are on the record.

Although she failed the elementary test of material accuracy, reviewing expenditures of the commissioners is far easier than reviewing actions taken in Domestic Relations Court. All one has to do is request a report from the County Auditor. A review of Domestic Relations Court cases is harder, either because the court did not collect much of the information essential to a review or because Judge Spillane has direct control of the information and is reluctant to let go of it.

Judge Spillane's behavior is consistent with the complaints I received regarding how she runs the Domestic Relations Court: Anyone who challenges or questions her is likely to suffer a punitive attack. Her penchant for "getting even" is well-known, and her response to the commissioners' questions says a lot about how she deals with those who come before her who are under her control and dependent upon her good will.

Perhaps she is still angry about an incident a few years ago when I objected and blocked her request to travel to Paris, France, at county expense, there to learn the wisdom of the French in the administration of law.

**Whether or not the Domestic Relations Court and the Juvenile Court become more open and respectful of the rights of those who are affected by their decisions ultimately depends on the attitude of the administrative judges. I am hopeful that this report will help create a**

**climate in which positive change is possible.**

## **Background**

Several citizens spoke at a January 6, 2003, County Commission meeting, complaining about the Butler County Domestic Relations Court and Juvenile Court. They said that judges and magistrates in these courts had allowed false and misleading testimony, violating their rights to due process of the laws. They complained that the courts excluded them from hearings, ignored court rules and failed to enforce court orders.

On January 27, Domestic Relations Judge Sharon Kennedy appeared at a County Commission meeting and offered a rebuttal. Judge Kennedy provided the commissioners with boxes of case files relating to issues in dispute. She challenged the commissioners to review the records and draw conclusions about whether the allegations had merit. Judge Kennedy did not provide commissioners with some copies of transcripts of testimony; hence a review of the allegations based solely on the material she provided would have been incomplete.

In addition to the January 6 complaints, several citizens who read newspaper accounts of the January 6 and January 27 meetings called the County Commission office to protest their experiences in the Domestic Relations Court and Juvenile Court.

Pursuant to Judge Kennedy's request, I reviewed many of the documents and records she provided to the County Commission. I also reviewed other documents including transcripts of testimony provided to me by parties to cases before Butler County's Domestic Relations Court and Juvenile Court. I met with and talked by phone to residents who told me of their experiences with these two courts. I received scores of calls from people who read news accounts about the issue. Many people told me stories similar to those documented here.

At a February Commission meeting, Commissioners Courtney Combs and Charles Furmon said they had reviewed the records provided by Judge Kennedy and found no evidence of perjury or lying. It was not possible to determine whether there were instances of falsification from a review of the records Judge Kennedy had provided, because they were incomplete and did not include needed transcripts. In addition to reviewing the documents she provided and other documents from those cases, I reviewed records from cases not discussed by Judge Kennedy.

I arrived at a much different conclusion. I found instances in which witnesses gave false and misleading testimony while under oath and filed false documents with the courts. This report documents those and other instances of procedural lapses that constitute barriers to due process, and it identifies the scope, nature and consequences of the problems encountered by people in the two courts.

## **Purpose of the Review and Study**

The Domestic Relations Court and the Juvenile Court of Butler County exercise enormous power over the lives of individuals, families and their property. Their power is nearly absolute. The only public agency in Ohio that touches the lives of more children and families is the public school system.

That decisions rendered by these courts are subject to appeal and judicial review is, while theoretically correct, from a practical point of view, a myth — of little value when that review concerns questions of the credibility or truthfulness of a witness. Reviewing courts virtually always defer to domestic relations and juvenile trial courts as to what testimony or evidence is believable or unbelievable and what is fair or appropriate relief.

The standard for review of a domestic relations or juvenile trial court is the amorphous and non-substantive “abuse of discretion,” which permits two judges to hear exactly the same evidence and come up with diametrically opposed outcomes.

Most people who go before these courts cannot afford to exercise their right of appeal, because it costs too much money. This stricture is particularly true in juvenile court proceedings. Nor can most who go through either of the two courts afford the financial burdens associated with asserting all of their rights at the trial level.

And while most people cannot afford the cost of asserting their rights, some can. Few things in life are more appealing to an attorney in this specialty than having an angry client with a lot of money. I spoke to people who spent tens of thousands of dollars in legal fees to maintain a relationship with their children or settle a score with an ex-spouse.

The actions of the trial courts become, as a practical matter, the litigants’ only opportunity for justice and fairness — the decisions of the trial court are effectively final. Even when someone does successfully appeal a case to the 12th District Court of Appeals, it takes forever to get through the process. And even when an appellant is successful, the Domestic Relations Court or Juvenile Court will sometimes ignore the decision.

Those who administer and work with these courts are fully aware of their power. The courts can dispense justice expeditiously or not at all. The temptation to abuse this power is ever present and, unfortunately for Butler County residents, too seldom resisted. The administration of the Domestic Relations Court and Juvenile Court has become the dominion of the haughty spirit, where tyranny often reigns and egos are easily bruised.

Two administrative judges, Leslie Spillane in Domestic Relations Court and David Niehaus in Juvenile Court, preside over these courts. They exercise virtually absolute power over those who come before them. In the course of this review, I was saddened by

how many people who talked to me feared that their attorney or the court might find out that they had made contact.

Many people who wished to remain anonymous told me that their attorneys had told them to stay away from me because it would hurt their cases if the judges or magistrates knew they were talking to me. This in itself is a sad commentary on the way the system works — for attorneys to advise their clients not to exercise their constitutional right to redress grievances because some judge or magistrate will punish them for doing so is fundamentally wrong.

The Domestic Relations Court has inculcated a culture of fear in which even lawyers I met with were afraid that the judge or magistrate would learn of their contact with me. And the Juvenile Court has exhibited the same problem, if not in the same degree. This fear is understandable. Every time an attorney stands in front of a judge or magistrate, the lawyer is actually representing all of the lawyer's clients, not just one.

If a lawyer offends the judge or magistrate, his or her entire practice and the interests of all of that attorney's other clients can suffer; all of a sudden, the lawyer's motions may go to the bottom of the pile and may take weeks or months to be heard; the lawyer's motions may be routinely denied; or the judge may seldom determine that the lawyer's clients have meritorious arguments on any issue before the court. By contrast, lawyers who have a good relationship with the judge can benefit greatly.

This culture of fear is manifest in other ways, as well. The experience of one person who came to see me wanting my help to get a transcript from a hearing in which he was a party in Juvenile Court is worth noting. We sent an e-mail to Rob Clevenger, the Juvenile Court administrator, requesting assistance. The client was fear-struck when his attorney told him that his request for a transcript of the hearing had angered the magistrate. His attorney told him that his child's guardian ad litem told him that the magistrate was aware of the request and unhappy about it.

Why would a magistrate even know that such a request was made? Juvenile Court rules requiring a party to an action to get specific permission from Judge Niehaus before he or she can have access to a transcript or record create a barrier to due process and set up an intimidating procedural hurdle.

What interest does the court serve in denying or delaying a party to a case access to the records of a proceeding in which he or she participated? Why even review it? Why not just let them have access to the records upon their request? In this instance, the client's lawyer was concerned that, by requesting the transcript, the client had damaged the lawyer's relationship with the court.

There are good people in the system — good lawyers, good court employees, good social workers and good advocates for reform. But too often they hesitate to speak up because they fear they will be punished. This fear is cultural. It has grown because it reflects a

tone set by Judge Spillane in the Domestic Relations Court and Judge Niehaus in the Juvenile Court. These judges created and nourished the culture; only they can change it.

During my review, I talked with attorneys, court employees and others familiar with the courts and found that the fear of reprisals is widespread. Often they would ask that we meet away from downtown; they did not want others to see them meeting with me.

Many of them agreed privately that my criticisms are on target, but asked me to understand that they could not speak publicly — their law practices or jobs depended upon having a good working relationship with the courts — or in some cases they protested that it was not their job to correct all the ills of the court system.

Several lawyers and others told me that I needed only to wait for Judge Niehaus and Judge Spillane to retire, and many of the reforms that I am pressing would be made. After meeting with Judge Niehaus, I was encouraged to hope that there might be another option — they can change the way the courts work.

In 1816, Thomas Jefferson wrote: “When [a cabal in the county courts] takes place, it becomes the most afflicting of tyrannies, because its powers are so various, and exercised on everything most immediately around us.” Jefferson wrote, “The system of justice will either protect citizens from tyranny or be one means by which tyranny is exercised over them. A just society rests upon an equal application of the law to each and every citizen; it protects the rights of individuals regardless of the inconveniences caused thereby.”

Each day Butler County residents experience firsthand the tyranny that Jefferson feared.

How would Jefferson feel about a citizen being told that he or she could not be present when his or her case was discussed behind closed doors? I would not like the court sitting in silence when a witness lies. I would not like being told that the only way I could see my children would be to work with a counselor imposed by the court. I would not like waiting months — sometimes forever — for the court to issue a final order so I could exercise my constitutional right of appeal.

I would not like being unable to confront those accusing me of wrongdoing in a public court so independent observers could form their own opinions about the fairness of the process. I would not like being told that the only way that I could exercise my appeal rights is to pay thousands of dollars for court transcripts prepared by court employees. I would not like being represented by a lazy, incompetent or corrupt attorney.

I would not like taking off work to go to court, finding a baby sitter for my children and paying my attorney to show up, only to learn that the matter was continued for some petty reason — often delayed in order to cost me money and aggravation in hopes of wearing me down. I would not like to learn that the judge or magistrate engaged in ex-parte communications with witnesses or attorneys involved in my case. I would not like having the court refuse to enforce its own orders.

We are a nation of laws; due process matters. Constitutional safeguards dating to the founding of our country set forth fundamental principles of justice upon which our legal system rests. Among those principles are the right to a jury trial, the right to face one's accusers, the right to a public hearing, the right to due process, the right to representation by competent counsel, the right to redress grievances through government and the right to protect property from confiscation without due process.

These principles have endured throughout our history. At times, they have been obscured and ignored. Fortunately, the system, while slow at times, has provided avenues for those whose rights have been trampled to change the system and make it more responsive to the requirements of justice.

Procedural protections essential for preserving due process rights are virtually non-existent in Butler County Domestic Relations Court and Juvenile Court. That the county's Bar Association turns its head on these abuses is shameful.

One part of the problem is that the justice system has been so prostituted that protections essential to the integrity of the justice system take a back seat to the comfort and convenience of insiders. Citizens caught up in the perverse domestic relations and juvenile systems are treated like extraneous nuisances whose main purpose is to provide a pretext for the insiders to make a good living.

Another part of the problem is that lawyers are trained to look at the world differently. They are taught to ignore right and wrong, substituting a perverse set of values in which process and procedure trump substance. What normal people consider a lie or false statement is perfectly acceptable in the world of law, where process is king, and whatever one can get away with is acceptable. Do what you must do to win.

Violations of laws and breaches of court rules are a scandal. But perhaps the larger scandal is not the actions that are formally improper or illegal. The practices that the courts allow and encourage within their rules are increasingly bringing our system of justice into disrepute.

America achieved greatness because it was built on a foundation of law. That Great Britain and the United States are the world's two leading nations in so many ways is no accident, sharing as we do a common heritage of justice under law. But we are undermining our foundation with the perversion of law that has become the rule in American courts. Too many lawyers seek not truth, but advantage.

Judge Edith Jones of the U.S. Court of Appeals for the 5th Circuit addressed the Federalist Society of Harvard Law School on February 28 of this year:

"The American legal system has been corrupted almost beyond recognition," Judge Jones said. "The question of what is morally right is routinely sacrificed to what is politically expedient. The change has come because legal philosophy has descended to nihilism ... the integrity of law, its religious roots, its transcendent quality are disappearing. I saw the

movie ‘Chicago’ with Richard Gere the other day. That’s the way the public thinks about lawyers,” she said.

“An increasingly visible and vocal number [of lawyers] apparently believe that the strategic use of anger and incivility will achieve their aims. Others seem uninhibited about making misstatements to the court or their opponents or destroying or falsifying evidence,” Judge Jones argued. “When lawyers cannot be trusted to observe the fair processes essential to maintaining the rule of law, how can we expect the public to respect the process?”

Thousands of Butler County residents who have witnessed a typical day in Domestic Relations Court or Juvenile Court would agree with Judge Jones’s commentary. Based on the small sampling of cases that I reviewed for this report and my own observations of court operations for more than two decades, so would I.

The sycophantic statement from the Butler County Bar Association following the initial meeting at which citizens alleged misconduct in these two courts struck me as symptomatic of the larger problem. In response to a letter that all three commissioners signed and sent to the domestic relations and juvenile judges, simply asking that the courts act to curtail false testimony in their courts, the Bar Association issued a letter calling on lawyers to rally to the defense of the two courts.

Mr. Donald Crane, president of the Butler County Bar Association, expressed concern that the commissioners’ letter and certain public statements were an attack on the integrity of the judicial system and would sap public respect for the legal system. What people actually experience when they go to court erodes respect for the courts far more than any statements the commissioners might make or questions they might ask.

The abuses are not unique to Butler County; they are common to juvenile and domestic relations courts all over the country. They are the rule, not the exception.

I am not suggesting that every misstatement of fact is perjury or should be punished as such. I realize that memories often falter, and false information is entered into the record unintentionally. Nor am I “taking sides” on the details of the substantive issues decided by the courts on matters litigated by those who brought me examples used in this report. I reviewed the cases to identify systemic barriers to due process, not to make a judgment about the substantive outcome of the cases.

In the Cathy Doerman case, for example, even though I use several examples from Ms. Doerman’s experience to highlight what I believe to be deficiencies in the system, I believe Judge Kennedy’s decision to hold Ms. Doerman in contempt of court and put her in jail for failing to grant her child the court-ordered visitation with his father was the right decision. I wish more magistrates and judges would jail those who ignore court orders.

I *am* arguing that judges and magistrates have an affirmative duty to deal proactively with false or misleading testimony when they hear it or see it, regardless of the motive for insinuating it into the process. If nothing else, the judge can (as Judge Yarbrough did in the Doerman case) remind the witness that falsification carries penalties.

They also have a duty to eliminate obstacles to due process. Often it appears that, once a person becomes a judge or magistrate, that person loses whatever common sense he or she may ever have had; things that are self-evident to most people somehow escape attention.

How many times, for example, does a key witness have to fail to show up or a person request a continuance before a judge figures out that the witness is playing the system? When someone fails to produce information necessary for the court to determine the facts, does it occur to the judge that there is something in the information that the person doesn't want the judge to know? When a party to a case gives testimony that is misleading or false, does the judge wonder whether the attorney representing the client knew of the falsity? Has a Butler County domestic relations or juvenile judge or magistrate ever even asked?

Regardless of the contention by judges and others who have expressed self-righteous and self-serving indignation about my allegations that the system routinely abides false and misleading testimony, the fact that **no one can remember anyone** ever being successfully prosecuted for giving false or misleading testimony in *any* proceeding before a Juvenile Court or Domestic Relations Court in Butler County is prima facie evidence that the system takes a casual approach to dealing with false testimony. Is it really believable that **no one** has **ever** committed perjury in Butler County domestic relations and juvenile proceedings? Hardly.

The choice with perjury is not limited to prosecuting or not prosecuting. Sometimes prosecution is appropriate, but judges have broad power to hold a witness in contempt if the judge determines that the witness tried to subvert the ends of justice by giving false testimony. Judges have complete authority to set practice standards before their courts through court rules and to take action against those attorneys who fail to comply with those rules. They have broad discretion in setting the rules of engagement in their courts. They can hold those who come before them in contempt for not complying with their rules.

I don't want to tar and feather everyone in the system. Although the culture of the system is abusive and hostile to protecting rights, there are people inside the system who want change.

Judge Kennedy, for example, is doing her part to open up the Domestic Relations Court. She requires that all proceedings in her court be on the record and that all parties be allowed to attend when their cases are discussed. Judge Kennedy does not close hearings or proceedings. Her practice is the notable exception in Domestic Relations Court and

Juvenile Court, where Judge Spillane, Judge Niehaus and the magistrates have routinely held meetings behind close doors, excluding the parties.

There are other encouraging signs. Newly elected Juvenile Judge Ronald Craft is committed to opening up the hearing process in Juvenile Court. And although Judge Niehaus has historically resisted opening up the process and has protected the secrecy of the Juvenile Court throughout his tenure, there are encouraging signs that this practice may change.

I recently met with Judge Craft and Judge Niehaus to discuss many of the issues cited in this report. They told me of changes they are implementing in the Juvenile Court that will, if implemented by their magistrates in their daily routine, address some of the issues raised here. The implementation of the new rules will be a learning process for all involved, and as we move forward I hope that the dialogue that I have begun to have with the judges will continue and that the changes they have proposed to open the process will be implemented.

But even when judges such as Judge Kennedy open their courts to the parties, lawyers can subvert the intent to open up the process. During the course of my review, people who had hearings scheduled in Judge Kennedy's court told me that their lawyers told them not to go to the hearing; the lawyers knew that, if the people showed up, Judge Kennedy would insist that they attend when the cases were heard.

Most people who find themselves in either of these two courts have no idea what their rights are. Hence the courts must take the lead in making sure that they know of their right to participate. If the law requires criminals to be told of their rights, is it too much to ask that court officials tell children and parents their rights, as well?

Of course, some people have been offended by my public comments, and they have told me so. Judge James Walsh of the Ohio 12th District Court of Appeals, for example, was offended that I had painted all the courts and lawyers with the same brush. He insisted that my criticisms were unfounded and irresponsible. Many lawyers and friends of the courts lamented that my criticism was based in ignorance — that I just do not understand the way things work. Others tried to shift the focus of the debate to the narrow question of whether perceived misrepresentations were perjury.

At the end of the day, it matters little what the judges or I think is real. Far more significant is how the public perceives our justice system and other public institutions. Building public trust in public institutions is vital in a democracy. There is nothing more powerful and more persuasive in defining the level of trust and respect that the public has for our institutions than the actual experience members of the public have everyday with public agencies.

We can gain insight into how the public sees the process by talking to those who have been through either of these two courts. That's what I've done. I have talked to those who

have direct experience inside the Domestic Relations Court and Juvenile Court in our county, and this report captures some of what they told me and I could document.

The courts ought to talk to those who pass through their system, as well. Most organizations committed to excellence use customer satisfaction surveys and exit interviews to improve their systems. Why not routinely interview parents and family members who have experience in our juvenile or domestic relations courts?

What I found and documented is an insult to the notion of due process, and it reveals two court systems that routinely crush the rights of those who come before them. I hope this commentary will make the case for doing things differently and restoring integrity, fairness and due process to the Butler County Domestic Relations Court and Juvenile Court.

This report identifies the practices and tactics that are used — and tolerated by the courts — to block the administration of due process, justice and fairness. It offers ideas on how to improve the process and insure that the respect and trust that the courts and Bar Association say they want and need is earned every day as they respect the rights of those who come before them.

We have no reason to fear our nation's founding principles of justice and heritage of providing our citizens due process under the laws; we need only to embrace them. When we do, our system of justice will enjoy the respect and confidence it needs and deserves to flourish.

To those who will argue that the examples I cite in this report constitute such a small number and are therefore not representative of the system as a whole, I would say that the very nature of the closed systems operated by both courts makes it difficult to get anyone to speak out until the person's case is over, and then only that person has not been worn down.

One needs to keep in mind that the domestic relations and juvenile courts generally retain jurisdiction over these cases until the children reach their 18th birthdays. This means that people continue to live in fear that they will face retribution in the event they speak out against court practices.

If the abuses cited here are not as widespread as I believe, then the recommendations I make in this report should not offend the courts. After all, if these things are not occurring, opening the process up to outside scrutiny should not be a problem.

## Barriers to Due Process and Fairness

### Introduction

The courts and their officers employ a variety of policies, practices, procedures, strategies and tactics to diminish or deny due process to parties in Domestic Relations Court or Juvenile Court. I have identified 13. They are:

1. **Closed proceedings**, in which the parties and the public are excluded. Regardless of where one comes down on the question of whether juvenile and domestic proceedings should be public, how can a party to a proceeding get due process if that person is excluded from the process? How can a person actively participate in his or her own advocacy, or evaluate the performance of his or her attorney, if the person is excluded from the proceedings?
2. **Barriers to documentation**. Various policies, procedures and practices make access to transcripts and records difficult, time consuming and expensive. How can a person get due process if effectively denied access to records, documents and transcripts of proceedings?
3. **False witness**. Misrepresentations, false statements and untrue testimony sometimes go unchallenged by attorneys and routinely accepted by the court, even when the information is obviously false. How can a person get due process if the information pool is contaminated with false, misleading and inaccurate information?
4. **Hollow orders**. The courts often fail to enforce their orders. How can a person get due process or justice if the court refuses to enforce its orders? Why not just call them suggestions?
5. **Empty discovery**. The courts often fail to enforce subpoenas and orders for discovery and production of documents. If a party cannot get sworn testimony on the record, how can that person correct inaccuracies in testimony? This failure is particularly important in Juvenile Court and Domestic Relations Court, because both courts routinely accept hearsay testimony.
6. **Delay in final orders**. The courts often either delay issuing or fail to issue a timely final appealable order. How can a party get due process if essentially denied a right to appeal because the judge or magistrate refuses to issue an appealable order? When this happens, the citizen is trapped in a legal purgatory without a remedy.
7. **Lack of record**. The courts fail to record the proceedings. How can a person get due process if the court does not make a record of proceedings? One cannot have an effective or successful appeal without a record of the proceedings.

Winning an appeal is difficult enough in a juvenile or domestic case, even when one has a copy of the record.

8. **Ex-parte communications.** Engaging in ex-parte communications is common practice. How can a person get due process if, in the person's absence, the judge or magistrate discusses issues in their case with witnesses, lawyers or experts involved in the case?
9. **Promiscuous continuances.** The courts routinely grant continuances. How can a person get due process if access to a hearing is delayed for months (sometimes as long as 6 months) because the court grants requests for continuances?
10. **Weak counsel.** Far too often attorneys fail to represent their clients adequately, and the court often provides indigent parties with inadequate counsel. How can a person get due process if the attorney does a shabby job? This issue is particularly acute when much of the proceedings are secret.
11. **Hollow procedures.** The courts fail to follow their own rules and procedures. How can a person get due process if the court violates its own rules and ignores its own procedures or allows others to violate them with impunity?
12. **Hearsay.** The courts routinely accept inadmissible hearsay testimony. How can a person get due process if the court accepts inadmissible secondhand and third-hand testimony, and the party affected by it is denied an opportunity to dispute or challenge the source of information?
13. **Court shopping.** Some attorneys and litigants use the Juvenile Court as a substitute for going to the 12th District Court of Appeals on issues litigated in the Domestic Relations Court and lost. Many cases on the Juvenile docket were first dealt with by the Domestic Relations Court. "Judge shopping" or "court shopping" prolongs conflicts, chews up resources and wastes tax dollars.

Accomplished attorneys know how to use these deficiencies to benefit their clients. The judges and magistrates are supposed to be the referees and make sure that those who appear before the courts have due process in a timely and fair manner — to make sure that these attempts to manipulate the system do not get in the way of due process. The judges and magistrates set the tone for the process. They can make the courtroom a place where people receive justice, or they can allow it to become a costly and time-consuming game room for lawyers.

Take hearsay testimony, for example. Ohio law rightly allows hearsay testimony in juvenile and domestic proceedings under certain circumstances. Many youngsters may not be competent witnesses, for example, but a need exists for someone to present the issues on their behalf. Professionals and expert witnesses, however, often have their findings and observations related by third parties, never having to attend the court hearing, ignoring subpoenas intended to compel their testimony with impunity. Thus key

testimony can go into the record without the witness offering the opinion being subject to challenge.

The courts have authority and discretion to apply the terms and conditions under which they will accept hearsay testimony. They can draw the line on admissibility narrowly or broadly. In Butler County, there is virtually no line at all. If the hearsay testimony is material to the court finding, then the court should bend over backwards to make sure that all parties have an opportunity to adequately challenge its accuracy. By applying a simple “common sense” test, a judge or magistrate can usually figure out when a potential witness is ducking an appearance and playing games.

Judge Spillane and Judge Niehaus set the tone; they control the administration of the courts, they hire and fire the magistrates and other employees, and they write the rules, procedures, policies and practices of the courts. For the most part, they have opted to make the Butler County Domestic Relations Court and the Butler County Juvenile Court the costly game room for lawyers. The public deserves better.

*Closed proceedings:*

**Secret Conferences, Closed Proceedings  
and Limited Access to Information**

Being present when a judge or magistrate discusses one's case with other parties to the case or witnesses is a fundamental right. Every time one is denied access to a proceeding in which one's interests are discussed, one's due process rights are diminished and violated.

The right to participate in one's own court proceeding and to be present when the court is discussing matters affecting one's interests is the cornerstone of due process. Being there matters. How can one's interests be adequately represented when one is not allowed in the room where the case is being discussed? Secret trials so offended our Founding Fathers that they included the right to a trial by jury and a public trial in the Bill of Rights.

Their outrage was well-founded. Excluding a party from a hearing, conference or other meeting in which the hearing magistrate or judge is present is wrong. It is an unjustifiable assault on fairness and due process. In Butler County Domestic Relations Court and Juvenile Court, it is standard procedure.

For years the Juvenile Court locked the doors to the hearing rooms while meeting with lawyers, caseworkers, guardians and other insiders. Direct parties to the case and other family members are usually left outside in the hallway. Judge Craft has led the way to end this practice, and Judge Niehaus has indicated he also will end this practice and instruct the magistrates to do the same.

How do people know what was discussed or not discussed when they are excluded from the process? How does a person get a fair opportunity to confront the truthfulness of allegations made against him if prejudicial statements made in these closed hearings go unchallenged? How does the process of excluding parties from the hearings contribute to respect for the court and the justice system?

The only interests served by closed meetings with magistrates and judges are the interests of the insiders — the lawyers, judges, magistrates, court employees and caseworkers — not children or families. Parties with matters pending before the Domestic Relations Court and Juvenile Court unnecessarily spend tens of thousands of dollars each year fighting about issues things that could have been avoided, if only they had not been excluded from the proceedings.

The cost to taxpayers is enormous, both in time and in money. The court dockets are cluttered with issues that, if only a record had been made of the proceedings and if only the parties had been present at the proceedings, could have been avoided. Much of the work that judges complain about is driven by their own procedural inefficiencies.

Every person wants his or her day in court. If the person is in the hallway when it happens, he or she will keep pushing for a chance to tell his or her story to the judge, or else will believe that his or her lawyer “sold me down the river.” Why not let the person be present in the courtroom whenever court proceedings are held?

I am not suggesting that a party be allowed to disrupt court proceedings. I am suggesting that, provided a party to a matter behaves in accordance with the appropriate rules of decorum, the person should almost never be barred from a proceeding. The exception would be that, under certain circumstances it serves the child’s best interest to have testimony given separately, recorded and thereafter presented at the hearing. Opening up the process would save everyone a lot of time, money and aggravation.

With few exceptions, the press and public should also be allowed to witness juvenile and domestic relations proceedings. The risk of having one’s darkest secrets revealed in the course of a proceeding is nothing compared to the risk of mischief being done when the doors are closed. Opening the doors to the public and press does not guarantee that abuses won’t occur, but in a democracy it at least provides a means to expose abuses when they occur.

The Mothers Against Drunk Drivers “Court Watch” program is an example of how the public can make a dramatic difference in how courts work when their proceedings are open to public scrutiny. Prior to MADD’s involvement, Driving While Intoxicated or Driving Under the Influence charges were routinely reduced to Reckless Operation of a Motor Vehicle or some other lesser offense. Punishment was unevenly applied, and getting out of jail was a matter of having the right lawyer or knowing the judge more than anything else.

Once MADD started monitoring courts and telling the public what was going on, everything changed. MADD used the power of public disclosure to fundamentally change the culture of America. Today, almost everyone knows that there are certain and swift consequences, likely jail time unless it’s the first offense, if arrested for drinking and driving.

Letting the public know how the courts deal with families and parents who hurt or abandon their children is important to communities, too. The consequences to our society and to the families affected by the courts can be serious, costly and life-changing.

Opening up our juvenile and domestic courts to public scrutiny will make a positive difference for kids and families. Shouldn’t the public be able to obtain data easily on how magistrates and judges deal with those who fail to pay their child support or who fail to follow visitation and other orders of the court? The County Clerk’s information system is designed to help the public get access to detailed information about cases pending in the criminal system. Neither the Domestic Relations Court nor the Juvenile Court information systems will allow the public to get the detailed information necessary to make even the most basic analysis or comparisons.

*Ex-parte communications, lack of record, barriers to documentation:*

❖ **Documentation of How Being Excluded From a Hearing, Not Having a Record of Proceedings and Control of Information Access Can Affect Due Process**

Having timely access to proceedings, official records and information is at the heart of justice and due process. The following example illustrates how lack of access creates a barrier to fairness. A system that fragments access to and builds walls preventing access to information is inevitably going to build barriers to due process. The need for open proceedings and access to information seems self-evident to everyone except those who control the juvenile and domestic relations courts.

❖ **Issue: Exclusion from Hearing, Not Having a Record of Proceedings, and Control of Information Access**

**Case: Carole A. Fallang (Plaintiff) vs. David J. Fallang (Defendant)  
Case Number: DR91-11-2082**

**Court: Domestic Relations Court**

**Judge: Judge Leslie Spillane**

**Issue or Action:**

Dr. David Fallang was excluded from numerous proceedings in Domestic Relations Court. This incident is an example of why excluding a party to a case from attending when the case is discussed is a bad practice. The question before the court was whether the defendant's (Dr. Fallang's) attorney agreed to specific terms of a child support order at a pre-trial settlement conference held Sept. 23, 1993.

This seems like a fairly easy question to settle: Just listen to the tape of the hearing. The problem is that Judge Spillane made no recording of the proceeding. Lacking a record of the proceedings, the debate centers on what the parties attending the conference decided and agreed to. Neither Dr. Fallang nor his ex-wife was allowed to attend the proceeding.

The consequence of this instance of a lack of record has been costly to the court, in both time and money. Over the past 10 years the parties and the public have spent thousands of dollars dealing with the appeal that grew out of the dispute arising from this unrecorded proceeding. The matter is still pending in the courts.

Here is the account of the events (emphasis added).

Mr. H.J. Bressler, now serving as a judge in the Butler County Common Pleas Court, General Division, represented the plaintiff. Mr. Bressler represented to the court: “It was my understanding when we left on September 23rd that all the counsel had agreed on what the support amount was going to be.”

Judge Spillane stated: “It was my recollection that we had agreed upon child support, not upon spousal support; is that not your recollection?”

The judge’s question was directed to defendant’s counsel, who responded: “Well, that’s not — that’s not correct your Honor ... that was why we — we’re, in part, why we’re here today because we did not agree upon it **nor did I have authorization to agree upon it on behalf of our client.**”

The judge recessed for 10 minutes and upon her return declared, “It is also my recollection that we did fairly well agree on the support figure. **That was not done formally, it was not put upon the record and I am willing to accept the fact that there may have been some misunderstanding about that agreement.**” The facts here speak for themselves: If, as Judge Spillane suggested, an agreement was reached, the fact that at least one of the parties to the action was disputing it demonstrates that there was no agreement.

The procedural issues involving this discussion are: 1) No record was made of the proceedings; 2) Dr. Fallang was excluded; 3) Court rules and state law require that a child support computation worksheet be completed prior to setting the child support level, which was not done; 4) The discussion that occurred in the pretrial settlement conference was not supposed to take place under the rules — a pretrial settlement conference is not a substitute for a hearing.

In effect, the child-support decision was made in a proceeding from which Dr. Fallang was excluded, without the benefit of a hearing or the completion of the child support computation worksheet. A further issue related to the calculation of spousal support is that Ohio law requires that the court consider the “tax consequences” of a spousal support award on each spouse. This was not done.

Had Dr. Fallang been allowed to attend the Pretrial Settlement Conference, and had a record been made of those discussions, the entire dispute over what was agreed to and by who could have been avoided. Furthermore, contrary to what Judge Spillane has repeatedly represented, it is clear — by the court’s own admission in putting its opinion on the record — that substantive issues were dealt with during the closed proceeding and decided by the court prior to a hearing on the merits.

**Documentation:**

Document: Fallang #17

Mr. Bressler's representation of the Settlement Conference Discussion, Sept. 23, 1993. In this document, Mr. Bressler represents that the court dealt with several issues, including the value of the medical practice.

Document: Fallang #18

Copy of Butler County DR Court rules regarding Property Pretrial Conferences, indicating that the court did not follow its own rules in dealing with the medical practice valuation issue.

Document: Fallang #19

Transcript of proceedings in which the Settlement Conference is discussed in court.

Document: Fallang #20

Copy of Butler County DR Court Rules saying that the "amount of the child support order shall be calculated pursuant to O.R.C. 311.215 and calculation sheets shall be attached to each temporary order."

Document: Fallang #21

Copy of Temporary Order for Child Support showing that the worksheet required by the statute is not attached, nor was it completed.

Document: Fallang #22

Recitation of case law indicating that the statute requires the court to consider the tax consequences of an award to each spouse.

### **Findings:**

With the exception of Judge Kennedy, who generally makes all conversations regarding a pending case a matter of record, the Butler County Domestic Relations Court and Juvenile Court and their magistrates routinely hold hearings, meetings, proceedings, conferences and trials in which parties to the action pending before the court are excluded from participation, in part or in whole.

I obtained statements from six people who estimated that they were excluded, in part or in whole, from at least 59 separate hearings and conferences in which the judge or magistrate participated. Their affidavits are attached to this report. If in the course of their juvenile or domestic court proceedings as few as six people documented 59 separate hearings from which they were excluded, then how many times are the hundreds and thousands of people who deal with these courts annually excluded from hearings?

None of the people I spoke to knew that they had a right to be present when their cases were discussed in front of a magistrate or judge. In fact, most said that their attorneys advised them that they were not allowed to participate or attend the closed-door meetings because the judge or magistrate did not want them present.

Information access is essential to the protection of fundamental rights. It is not only important to create a record of proceedings, it is vital that those affected by court actions have uninhibited access to the record.

Numerous barriers frustrate access to information. Access is expensive, procedurally difficult and oftentimes impossible. Information systems designed by the Domestic Relations Court and the Juvenile Court do not integrate with other system users, such as the Clerk of Courts and Children Services. The system designs do not contemplate integration between the two courts, and neither do they facilitate access from the public.

The practice of having court employees working on their own time to prepare transcripts controls access to those transcripts is costly and is inefficient. This arrangement blocks and frustrates access. Also, the practice of refusing to make tapes of the proceedings available on request so that parties to the case can listen to them at their leisure is an unnecessary barrier to access and contrary to Ohio's statutory of open access to public records during normal business hours.

### **Documentation:**

Affidavits of persons excluded from hearings.

### **Recommendations:**

- Court rules should require that all proceedings, meetings, conferences, hearings and trials relating to a matter before the court wherein a magistrate or judge is present be conducted in an open forum in which parties to the action and members of the public are present.
- Court rules should require that all proceedings, meetings, conferences, hearings and trials relating to a matter before the court in which a magistrate or judge is present be open to the public and press.
- Court rules should require that all children involved in juvenile or domestic relations court proceedings be informed that they have a right to attend a hearing in which their interests are affected, that they have the right to request that an attorney be assigned to represent their interests, and that they have a right to request a private meeting with the judge to directly express their thoughts about issues before the court.
- Court rules should require that any time a magistrate or judge excludes anyone from a proceeding, a record of that decision should state the reasons for such exclusion, and that the court should compile a log of all exclusions, listing the record of each magistrate and judge and cataloguing any exclusions that they have approved, and that the log should be open for public inspection.

- Court rules should require that an official audio record of all proceedings, meetings, conferences, hearings and trials be kept and open for public inspection.
- Court rules should require that all ex-parte conversations between a judge or magistrate and a party, witness, potential witness, court appointed expert or other person involved in or having an interest in a matter before the court must be tape-recorded and included as part of the official record.
- The Domestic Relations Court and Juvenile Court should give written notice to all parties to a matter before their court or a magistrate of their court that they have a right to attend any proceeding, meeting, hearing, conference or trial in which any party or representative of a party involved in the action may discuss a matter or issue relating to their case. The only exception to this principle should be when the judge or magistrate determines that the testimony of a child should be conducted either privately or with limited participation of the parties.
- The Domestic Relations Court and the Juvenile Court should post in a conspicuous place in their court areas an official notice that any party to a case has a right to be present whenever the case is discussed in a hearing, conference, proceeding, meeting or trial in which a magistrate or judge is present. The local rules of the Domestic Relations Court and the Juvenile Court should require that all notices to appear at a proceeding contain a written notice of the individual's right to be present during the proceeding of which the individual is receiving notices.
- The Rules of the Domestic Court and Juvenile Court should provide for a sanction against any attorney who misleads a client about the client's right to attend any conference, hearing, proceeding, meeting or trial in which a judge or magistrate is present and matters affecting the client's case are discussed.
- The software and information systems being designed and implemented by the Domestic Relations Court and Juvenile Court should be modified to integrate with other justice related information systems being used by the Clerk of Courts and other users. The Juvenile Court should modify its design to integrate seamlessly with the Children Services Board and other associated systems.
- The information systems of both courts should be modified to allow for lawyers, guardians and other court officials to have direct online access. The system can be designed to allow for appropriate security restricting levels of access depending upon the category of user.
- The information systems of both courts should be modified to allow for the broadest possible public access.
- Both courts should make tape recordings of proceedings available at nominal cost to any party to the dispute or member of the media upon their request.

- The practice of giving court employees control over access to transcripts should be stopped. The court can easily provide a system of transcript preparation that provides for competition.
- The Juvenile Court should provide free transcripts in any case related to a permanent custody brought before it. Permanently removing a child from a family is the civil court equivalent of capital punishment. No one should be limited in the ability to assert a defense by not having enough money to buy the transcripts needed to file an appeal. Making it expensive for individuals to get access to court records seriously erodes individual rights of due process. The court policy regarding access should be opened up and designed to facilitate access, not discourage it.

*Weak counsel:*  
**Inadequate Representation**

A young girl caught in Ohio's juvenile justice system accurately summed up the lack of quality representation for poor families and others who find themselves caught up in the juvenile justice or domestic relations courts when she said, **"I always waive my right to an attorney because it's easier and quicker than waiting for somebody who won't care about my case anyhow."**

While the president of Butler County local Bar Association was chastising me for questioning the fairness and quality of justice dispensed by Butler County Juvenile Court and Domestic Relations Court, the American Bar Association in cooperation with the Ohio State Bar Association was completing work on an assessment of access to quality representation in Ohio's juvenile court delinquency proceedings. They reached the same conclusion that I did — the quality of justice that judges and magistrates of Ohio's juvenile justice system dispense stinks. The ABA released its study in March of this year, and among the most significant findings cited by the report are:

- Numerous obstacles thwart Ohio's poor children in obtaining lawyers in the juvenile justice system.
- Zealous representation from well-trained attorneys in the juvenile justice system seems to be the exception, rather than the rule, for indigent youth in Ohio.
- Numerous systemic barriers hamper effective representation of children.
- Ohio lacks leadership on juvenile justice issues that could effectively ensure that the rights of children are protected.

The assessment, entitled "Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Ohio," used protocols established by the American Bar Association and underscored the earlier findings of a 1995 national assessment conducted by the ABA.

The U.S. Department of Health and Human Services has also conducted a study of the adequacy of representation in the juvenile justice system. They observed: "Poor quality legal representation results from a variety of factors ranging from the pressure of high caseloads to poor customs and low expectations of representation in the jurisdiction. The old reputation of juvenile and family courts as a lesser 'kiddie court' persists in some places, despite the increased sophistication and complexity of both the law and the underlying interdisciplinary perspective required to handle these cases effectively. Child welfare is a unique and highly specialized area of practice, yet many advocates have not received training in handling such cases. In many States, neither ethical requirements nor practice standards for attorneys in child abuse and neglect cases have been developed."

### **Findings:**

While the ABA study focused specifically on the quality of representation of children in the juvenile justice system, the study's conclusions are just as relevant to the adequacy of representation of the families of those children. The study accurately describes the state of legal representation for indigent families and children in Butler County.

One of the complaints I hear most frequently from those involved in juvenile and domestic relations court actions is that their attorneys seldom talk to them, come to court inadequately prepared and exclude them from the process. These complaints even come from people who are paying their own way. The situation involving court-appointed counsel is far worse.

Attorneys complain that the fees are too low. Clients complain that their attorneys rarely care about their case and that the lawyers spend little time preparing for hearings.

The judges exclusively control designation of court-appointed lawyers. This arrangement creates the appearance of conflict, real or not. When the judge who hears the case also appoints their attorney, clients wonder how independent and aggressive the lawyer will be in asserting their rights. Further, if practicing attorneys consider the fees inadequate, then how much effort will they make when they feel they are being underpaid?

### **Documentation:**

Report of the American Bar Association: "Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Ohio" (see attachment).

### **Recommendations:**

- Butler County should adopt a Public Defender system for representing indigent families and children who need legal assistance in the juvenile and domestic relations courts. When we engaged the Legal Services of Cincinnati two years ago to provide guardian ad litem representation for children, the quality of the representation dramatically improved. I believe that we would see similar results if we were to move to the same model for indigent defense.

*False witness:*  
**Misrepresentation, Falsification and Perjury**

When the Butler County Commissioners recently commented that they were unhappy with the level of cooperation that they had received from officeholders on reducing expenditures, many county officeholders were offended by what they thought were misrepresentations by the commissioners.

County Prosecutor Robin Piper said officeholders didn't want their reputations unfairly tarnished. The prosecutor said, "The officeholders were somewhat offended by the blatant misrepresentation to the public that we weren't concerned with the budget and willing to make cuts in our budgets."

In fact, Mr. Piper and the other officeholders had a point. The way the story evolved in the media, it *did* paint an inaccurate picture of the level of cooperation in county budgeting that existed between nearly all officeholders and the commissioners.

While the commissioners' comments were directed to officeholders' apparent failure to respond to one budget-related letter (a letter that was not clear on whether it requested a response and not intended to describe the overall nature of our relationship with the county's officeholders), a reasonable person reading the press coverage could have concluded that the officeholders were not working with us to balance the county's budget, when in fact they were.

When the commissioners discovered this misunderstanding, we apologized to the officeholders and set the record straight. As Mr. Piper said, we did not want to unfairly tarnish their reputations.

When people go into Domestic Relations Court or Juvenile Court, they have much more at stake than tarnished reputations. In these courts, they have their money, other property, children, homes and family lives at risk.

Isn't it reasonable to expect that they would be every bit as concerned about the effect that misrepresentations and false statements have on their lives as county officeholders are about theirs? They are.

Unfortunately, for them the process is not as open as the meeting process of the Butler County Commissioners. The press is excluded, and oftentimes the misrepresentations and falsifications occur behind closed doors, outside the purview of the media. The Domestic Relations Court and Juvenile Court environments are much different and more hostile to seeking the truth.

Judges and magistrates in these courts would have the public believe that they are mere passive observers to the process, with no obligation to enforce the requirements imposed by the oath that each witness and attorney takes. I believe that their obligation to make sure that the record reflects the truth and that misrepresentations and falsehoods are

removed from the record is no less than that borne by County Commissioners and other public servants.

**Magistrates and judges do not have to sit by helplessly as their courtrooms become cesspools of deceit.** Judges, magistrates and others involved in the legal system make better decisions when they have accurate information. Few things anger and frustrate a person involved in a court case more than a sense that the judge or magistrate doesn't care about getting at the truth.

Our justice system is built on a search for truth. Each time a witness testifies in court, he or she is asked to take an oath "to tell truth, the whole truth and nothing but the truth." Lying under oath is punishable as a felony.

Not only do witnesses take an oath, but lawyers do so as well. Upon admission to the bar, attorneys swear that they "will not knowingly assert any unwarranted claim or defense, take any unjust action, or employ or countenance any undue influence, deception, falsehood or fraud." The disciplinary rules of the Ohio Supreme Court state that a "Lawyer shall not . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Unfortunately, the responsibility to enforce these rules rests with lawyers who seem to have a far greater tolerance than the general population for "stretching the truth" when giving testimony.

The need to be honest and truthful in court is self-evident. Trial courts seek to establish the "facts" and propose remedies and actions based upon their understanding of the facts. Contaminating the information pool with false and misleading information perverts the ends of justice and defeats due process.

In the framework through which the courts work, each person has a role, and if they all perform their roles in earnest, the result, more often than not, will be to get as close to the truth as possible. If any player in the process is weak, then the whole process suffers. The foundation of the adversary system is that statements and representations of facts will be challenged to determine their truthfulness. When false statements go unchallenged, justice and fairness suffer.

### **Documented Examples of Falsification and Misrepresentation:**

The following examples are presented only for the purpose of documenting instances where the court was given false, misleading or inaccurate information. The purpose is only to illustrate that the court received such information and took no action, nor did the court even note that it was offended by attempts to mislead it. The purpose is *not* to make a judgment regarding the final outcome or decision in any particular case.

There even may be instances in which even those complaining that they were the adversely affected by false information being given to the court, themselves, have presented false, misleading or inaccurate information to the court. If so, the breach only

underscores the point that this review is trying to make — that documented instances in which the Butler County Juvenile Court or Domestic Relations Court receives false, misleading or inaccurate testimony or statements lead to no expression of offense by the court nor any action to punish those responsible for attempting to mislead the court.

Simply put, one can give false, misleading or inaccurate testimony or make false, misleading or inaccurate statements in Juvenile Court and Domestic Relations Court in Butler County and suffer no adverse consequence. The following examples make this point.

*False witness:*

❖ **Issue: False document filed with court**

**Case:** William A. Becker (Plaintiff) vs. Teresa L. Becker\* (Defendant)

**Case Number:** DR92-03-0385

*\*Teresa Becker's current last name is Fallang*

**Court:** Domestic Relations Court

**Judge:** Judge Leslie Spillane

**Issue or Action:**

Domestic Relations Court rules require that individuals filing for divorce file a statement listing their assets and income. The court uses this form, referred to as a 602 Form, as a basis for dividing property and assigning support obligations. In a case brought to my attention, records show that Mrs. Fallang's ex-husband, William Becker, filed a 602 Form excluding any reference to his pension benefits as required by section "D" of the 602 Form. At the time of the divorce, Mr. Becker was a police officer for the City of Middletown. A divorce was granted based on the 602 Form that was false and incomplete.

It might be understandable that the court initially missed this omission because the divorce was filed as dissolution of marriage. It is difficult to believe that the lawyer filing the dissolution did not know that the asset declaration was not accurate because the 602 Form did not report the value of the pension. Furthermore, the Domestic Relations Court spends somewhere between \$250,000 and \$300,000 annually on a compliance unit that is supposed to review filed documents and check them for completeness and compatibility with the law.

When the ex-wife later discovered the significance of excluding the pension amount from the asset declaration, Mrs. Fallang (ex-Mrs. Becker) filed a motion to have the divorce judgment set aside, alleging her husband's deliberate concealment of his pension. The husband said it was an unintentional oversight, and the ex-wife argued that it was a

deliberate act. Regardless, its exclusion from the settlement calculation financially worked significantly to the advantage of the ex-husband.

In deciding on a motion filed by Mrs. Fallang (Becker) to correct the error and omission, Judge Spillane wrote: “Here, the pension is clearly the most valuable asset in the marriage and if second petitioner had knowledge of its true value, it appears ludicrous to assume it would have no effect on her decision to enter into the Agreement.”

Judge Spillane also wrote: “Husband’s DR602 failed to list the value of his pension as required. ... Husband does not deny that the value of the pension was omitted from the financial disclosure forms ...” [Value omitted] “Subject to equitable distribution would have been one hundred twenty thousand, nineteen dollars and four cents (\$120,019.04).”

Evidence was presented to the court that the omission was deliberate. **Notes contained in file of husband’s attorney’s, Tim Evans, contained a hand-written note stating, “Don’t show pension on 602’s.”**

Notwithstanding the fact that the DR602 form was false and misleading, and notwithstanding the fact that **Judge Spillane called it “ludicrous to assume that it would have no effect,”** Judge Spillane denied a motion to reopen the case, saying that Mrs. Fallang did not try hard enough to expose her ex-husband’s false filing in a timely manner. Note: The Police Retirement Fund will disclose the value of a pension only to the person who is legally entitled to the pension, hence the pension system would not have revealed the pension value to the wife even if she had inquired.

**Attorney Evans’ testimony that he didn’t know how the note stating “Don’t show pension on 602’s” got into his file went unchallenged by the court.**

Mrs. Becker was not represented by an attorney in the initial dissolution proceeding. Mr. Evans presumably represented Mr. Becker. The court made no effort to discover whether Mr. Evans knowingly withheld the information about Mr. Becker’s retirement account from the court. Mr. Evans testified that he did not know how the note instructing that the pension fund not be listed as an asset on the 602 Form got into his file.

Mr. Evans has vast experience in representing public sector employees, including municipal police officers. It is not believable that he did not know that Mr. Becker’s public service would generate police and fire pension system rights for Mr. Becker. Didn’t Mr. Evans review his own file in preparing the dissolution documents such that he would find the note?

Shouldn’t the note in Mr. Evans’ file directing not to disclose the pension account raise questions with the judge about whether an ethical violation occurred? And what about the ethical requirements of the Ohio Supreme Court that state, “Lawyer shall not ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation?”

Lawyers take an oath not to engage in deceit, fraud, or misrepresentation. Most non-lawyers would question whether Mr. Evans' conduct violated these duties. The court took no action to look into this important question.

Mrs. Fallang has filed an action against Mr. William Becker and Tim Evans to recover damages for fraud. It is pending in the General Division of the Butler County Court of Common Pleas (Case number: CV 2001 06 1443).

**Documentation:**

Document: Lynn Fallang #1  
Ex-husband's DR 602 filing.

Document: Lynn Fallang #2  
Court Exhibits 1 and 2.

Document: Lynn Fallang #3  
Decision and Entry January 14, 1998.

Document: Lynn Fallang #4  
Memorandum in Opposition to Defendant Evan's Motion to Dismiss (Case # CV2001 06 1443 Judge Spaeth).

*False witness, hollow orders:*

❖ **Issue: False and Misleading Testimony**

**Case: Valerie Poptic (Plaintiff) vs. John Poptic (Defendant)**  
**Case Number: DR00-04-0479**

**Court: Domestic Relations Court**

**Judge: Judge Leslie Spillane**

**Issue or Action:**

In testimony before the court, Mrs. Poptic, plaintiff, denied taking money out of several investment accounts and then, when confronted with evidence that proved her testimony false, conceded that she did remove several thousand dollars from the investment accounts.

The questions before the court were whether the wife removed money from the marital accounts and, having taken it, whether she tried to conceal the fact that she had transferred the money in anticipation of the divorce?

Mrs. Poptic testified that she did not take any money from specified accounts in 1995 and until November 1996. She claimed she took money from one account, Scudder (there were three accounts: Fidelity, Scudder and Schwab), but did not take any money from the other accounts.

Confronted with copies of cancelled checks bearing her signature showing that she did in fact take several thousand dollars from the other two accounts in 1995, she admitted that, contrary to her earlier testimony, she took money from the accounts in 1995.

Quote from her testimony:

Question: “Mrs. Poptic, my question to you is this, yesterday you were quite clear with everyone in this courtroom that you wrote no ... that you took no money out of any of these three accounts (Fidelity, Scudder or Schwab) in 1995 except \$17,000?” Answer: “That’s right.”

When Mrs. Poptic was confronted with copies of checks for large sums bearing her signature, she answered: “... No, my gosh, he has so many documents. How was he able to get this?” (Referring to the documentation that she had not been truthful in her testimony).

Question: “Did you write yourself a check for \$71,000 on June 27th, 1995?” Answer: “I ... I guess I did.”

Despite repeated denials by Mrs. Poptic that she had taken no money other than \$17,000 from the one account, evidence shows the testimony to not be truthful. Mrs. Poptic later stated that she was advised by an attorney to take more than half the money that was in the accounts because she had possession of the children.

Once confronted with evidence that, contrary to her testimony, she had in fact taken a substantial amount of money from the accounts in 1995, she shifted the focus of her testimony to say that she only took half of the accounts, an amount she felt entitled to take.

**In the face of bold and unmistakable false statements to the court, the judge said nothing and did nothing.** Nor did the court attempt to determine whether Mrs. Poptic’s testimony that she “only took half of the accounts” was accurate. Mrs. Poptic was ordered to produce all her financial records. She refused to produce them.

Mrs. Poptic did not comply with the court order requiring her to produce records of her financial transactions, and the order was not enforced. These documents are important because they are necessary to accurately determine whether the asset split was done in accordance with the desires of the court.

This incident clearly demonstrates the court’s casual attitude about truth. The average person would think that, having witnessed Mrs. Poptic’s false and misleading testimony,

the judge not only would be offended by the attempt to lie, but, having witnessed the lie firsthand, would be even more interested in making sure that Mrs. Poptic produced her financial records so that the truth of how much money was taken could be established.

These records would be critical to the court's ability to determine the facts relating to how the family assets were actually divided. Mrs. Poptic's failure to comply with the court order meant that the court did not get the benefit of the best evidence to determine the truth of the matter. The court did not seem to be the least bit interested in making sure that the actions actually complied with its desires.

**Documentation:**

Document: Poptic #1

Transcript of testimony Feb. 26, 2002, Pages 7,9,10,15,16,17,18,20,21,22.

Document: Poptic #2

Transcript of testimony Feb. 26, 2002, Pages 2 through 6.

Document: Poptic #3

Copies of cancelled checks trial exhibit "Z," showing that testimony is false.

Document: Poptic #4

Copy of order signed by Judge Spillane ordering, "Mrs. Poptic shall provide 1995 bank records within 7 days."

*False witness:*

❖ **Issue: False and Misleading Testimony**

**Case: Valerie Poptic (Plaintiff) vs. John Poptic (Defendant)**

**Case Number: DR00-04-0479**

**Court: Domestic Relations Court**

**Judge: Judge Leslie Spillane**

**Issue or Action:**

Mrs. Poptic, plaintiff, was trying to stop her husband from having visitation with his children. She denied him visitation and then justified that denial by testifying before Judge Spillane that the guardian ad litem and Juvenile Court Magistrate Eva Kessler told her not to follow the court order requiring visitation. Both the magistrate and the child's guardian denied having told Mrs. Poptic to deny her husband visitation with his children.

**This case is also interesting because the action taken by the plaintiff was identical to the action (failure to comply with a visitation order) in the Cathy Doerman case. When Ms. Doerman failed to comply with a visitation order, Judge Kennedy put her in jail for contempt. When Mrs. Poptic committed the same action and compounded it by giving misleading information to the court, Judge Spillane removed herself from the case, rather than find Mrs. Poptic in contempt.**

Testifying before Judge Spillane while asking for an order preventing her ex-husband from having visitation with the children, Mrs. Poptic claimed that the reason she denied him court-ordered visitation was that Magistrate Kessler advised her during a court hearing that she should “use your maternal instincts in deciding whether to deny visitation or not.”

A court transcript of Mrs. Poptic’s appearance before Magistrate Kessler showed that Magistrate Kessler did not say anything close to what Mrs. Poptic claimed she said.

Mrs. Poptic also testified that the guardian ad litem called her and told her to not let Mr. Poptic have the children for visitation. According to the record, Judge Spillane called the lawyers into her chambers for a private discussion. According to Mr. Poptic, Judge Spillane also called the guardian and determined that no such call had been made. Neither Mr. Poptic nor Mrs. Poptic had the benefit of being present when these discussions occurred behind closed doors. The process was not fair to either party.

Judge Spillane also called in Magistrate Kessler, who, according to Mr. Poptic, said she did not say what Mrs. Poptic testified she said. Thereafter, Judge Spillane announced that she could no longer maintain objectivity in the case, writing in her decision: “This judge has formed opinions regarding the parties that make it impossible to hear any further matters in an impartial [word undecipherable] or objective manner.”

Judge Spillane recused herself from participating in further proceedings and assigned the case to a visiting judge.

It is clear that Mrs. Poptic tried to mislead the court. Her testimony before Judge Spillane was false. Judge Spillane apparently was offended. However, Judge Spillane chose to recuse herself, rather than sanction the person whose behavior had compromised her objectivity. Judge Spillane’s action ended up punishing Mr. Poptic, because the assignment to a visiting judge significantly delayed the proceedings and cost Mr. Poptic substantially more money in legal fees.

Furthermore, normal people would expect the judge to at least declare that the offending and misleading testimony was unacceptable. We are left to infer that the judge had concluded that Mrs. Poptic was lying. Unfortunately for Mr. Poptic, Judge Spillane did not state the specific reasons for her actions on the record. If the judge acted because she was offended by Mrs. Poptic’s misleading testimony, the recusal gave Mrs. Poptic the benefit of her own misconduct by removing the judge who believed Mrs. Poptic was an habitual liar from the case.

Finally, the court did nothing to enforce Mr. Poptic's right to exercise his visitation. Despite Mrs. Poptic's admitted defiance and non-compliance with the courts order to allow visitation for Mr. Poptic, the court did not find her in contempt, nor did it direct her to comply.

**Documentation:**

Document: Poptic #5  
Hearing transcript, October 8, 2002.

Document: Poptic #6  
C.P.O. Transcript July 14, 2002, proceedings before Magistrate Kessler.

Document: Poptic #7  
Judge Spillane order declaring that she had lost her ability to remain impartial.

*False witness, empty discovery:*

❖ **Issue: False and Misleading Testimony Representation to Court**

**Case: Carole A. Fallang (Plaintiff) vs. David J. Fallang (Defendant)**  
**Case Number: DR91-11-2082**

**Court: Domestic Relations Court**

**Judge: Judge Leslie Spillane**

**Issue or Action:**

Dr. David Fallang, defendant, was trying to get a copy of a document that Mr. Duvall, an expert witness hired by Mrs. Fallang, plaintiff, said he used in appraising the value of the defendant's medical practice. Mr. Bressler, attorney for the plaintiff, did not want Dr. Fallang to have the document. Mr. Bressler (before he was a Common Pleas judge) told the court that he did not hire Mr. Sicking, the expert who wrote the report referenced by Mr. Duvall, as an expert. Mr. Bressler's representation to the court was contrary to what Mr. Sicking wrote in a letter to the defendant, Dr. Fallang.

Mr. Sicking clearly thought he was retained to "do a valuation of the Middletown Surgical Associates, Inc." (Dr. Fallang's medical practice), because that was what he wrote in a letter to Dr. Fallang requesting information about his medical practice. Why did the court show no interest in reconciling the apparent contradiction between what Mr. Sicking wrote in his letter to Dr. Fallang and what Mr. Bressler represented to the court?

Mr. Duvall, an expert witness hired by the plaintiff, testified that he relied on a report prepared by Mr. Sicking, another accountant (expert witness), to determine the value of Dr. David Fallang's medical practice. Mr. Duvall claimed that Mr. Bressler, attorney for Mrs. Fallang, gave him a copy of the report. Mr. Bressler represented to the court, "Judge, I didn't consult him [referring to Mr. Sicking] as an expert; I consulted him to go in and check the number of days the Doctor was working."

Contrary to the representation to the court that Mr. Sicking (Certified Public Accountant) was merely checking to see how many days Dr. Fallang worked, a letter to Mr. Bressler dated April 22, 1992, outlined the information that Mr. Sicking said he would need "in order to do a valuation of the Middletown Surgical Associates, Inc." (Dr. Fallang's practice). Subsequent to this letter, Dr. Fallang provided Mr. Sicking with the requested information (16 categories of information).

Mr. Duvall testified, "I relied on that report [the report prepared by Mr. Sicking] for my report." In a motion for discovery, Dr. Fallang requested that he be given a copy of the report that Mr. Duvall said he reviewed and relied on in estimating the value of the medical practice. Mr. Bressler failed to provide a copy of the report that had been requested in motions for discovery.

Why did it matter? It mattered because Mr. Duvall, who testified on behalf of Mr. Bressler's client, Mrs. Fallang, testified that he relied on the report by Mr. Sicking to reach his conclusions about the value of Dr. Fallang's medical practice. Obviously, the value of the medical practice would influence the property settlement.

When Mr. Duvall said he relied on a report not in evidence to reach his conclusions, Dr. Fallang demanded a copy of it and filed a motion for discovery, asking the court to order Mr. Bressler to give him a copy of the report. Dr. Fallang believed that Mr. Bressler was unhappy with the conclusion reached by the Mr. Sicking, and that Mr. Bressler therefore retained another expert, Mr. Duvall, hoping to get a higher estimate on the value of Dr. Fallang's medical practice.

Having a copy of the report upon which Mr. Duvall based his valuation opinion would have allowed Dr. Fallang to better understand the methodology used to determine the value of his practice and to challenge the assumptions and methodologies used. Also, if the Sicking report showed a lower value, Dr. Fallang would have used the report to support his valuation argument.

Evidence Rules 703 and 705 make it clear that Dr. Fallang was entitled to a copy of the report and are relevant to this discussion. Rule 705 says, "The expert may testify in terms of opinion or inference and give his reasons therefore after disclosure of the underlying facts or data. The disclosure may be in response to a hypothetical question or otherwise."

Rule 703 says, "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by him or admitted in evidence at the hearing." The point is that the report on which Mr. Duvall said he relied to form his

opinion should have been admitted into evidence at the trial without need for discovery upon appropriate cross-examination once Mr. Duvall stated he relied on the report of Mr. Sicking. But Judge Spillane did not force Mr. Bressler to produce the document.

Here was a report that a witness prepared containing information or data used by an expert to render an opinion, and underlying and relied-upon data was withheld from the opponent by the attorney for the party putting the expert on the stand; the court refused to enforce the rules of evidence.

The extent and effectiveness of cross-examination of Mr. Duvall by Dr. Fallang's attorney at the DR trial may or may not have effectively obtained from Mr. Duvall the essence of the information that he took from Mr. Sicking's report and relied upon. Once Mr. Duvall said that his valuation of the medical practice was based upon a report written by Mr. Sicking, given to him by Mr. Bressler, Dr. Fallang should have had the opportunity to scrutinize and challenge the methodology of the original report that Mr. Duvall claimed was the basis for his opinion.

Dr. Fallang's interest was prejudiced and denied justice of the cross-examination of Mr. Duvall and was hindered or rendered ineffective if the court's rulings on the cross-exam prevented Dr. Fallang's attorney from learning what was in the Sicking report that Mr. Duvall relied upon.

Mr. Bressler blocked Dr. Fallang from getting a copy of the report, arguing that Mr. Sicking, the first expert, was not hired to render an opinion of the value of the practice, but merely to count the number of days that Dr. Fallang was at the practice.

How can Mr. Sicking's letter and Mr. Bressler's statement to the judge both be accurate? Mr. Sicking may have misunderstood what he was hired to do, but that should have no bearing on Dr. Fallang getting a copy of his report to Mr. Bressler and reviewing it. Clearly, there is some reason why Mr. Bressler did not want Dr. Fallang to have access to the document, and Judge Spillane assisted him in that objective by not requiring Mr. Bressler to produce the report.

**This issue is important for three reasons:**

- 1) The report was needed to determine whether Mr. Bressler was accurate when he told the court that he merely consulted Mr. Sicking to count the number of days that Dr. Fallang worked or at least get a plausible explanation for why Mr. Bressler and Mr. Sicking had different views of Mr. Sicking's role;**
- 2) The question of whether Mr. Sicking performed a valuation of the practice and any other functions beyond just counting the days Dr. Fallang worked could have been answered easily by making a copy of Mr. Sicking's report available to Dr. Fallang, as it had been requested in a discovery motion which the court failed to enforce, and;**

- 3) **Dr. Fallang believed that Mr. Sicking had indeed given to Mr. Bressler an estimated valuation of his practice, and that Mr. Bressler was not pleased by the conclusion reached by Mr. Sicking. Dr. Fallang believed the Sicking estimate was lower than Mr. Bressler wanted, and that therefore Mr. Bressler did not want to disclose that one of his own “experts” had appraised the practice lower than the amount that Mr. Bressler’s new expert was asserting.**

This entire discussion and related testimony were crucial to establishing the value of one of the main assets in the divorce action. One of the issues before the court was whether different experts had rendered different valuations of the practice and which one the court should rely on in setting the practice value.

Failure of Dr. Fallang to obtain the Sicking report prejudiced Dr. Fallang’s opportunity to discredit the opinion of Mr. Duvall. The court showed no interest in enforcing the discovery motion and hence denied the defendant an opportunity to effectively challenge one of the most important arguments proffered by the plaintiff.

**Documentation:**

Document: Fallang Doc #1  
Transcript Pages 738 through 740.

Document: Fallang Doc #2  
Mr. Sicking’s letter to attorney H.J. Bressler outlining what information he needed in order “to do a valuation of Middletown Surgical Associates.”

*False witness:*

- ❖ False and Misleading Representation to the Court

**Case: Carole A. Fallang (Plaintiff) vs. David J. Fallang (Defendant)  
Case Number: DR91-11-2082**

**Court: Domestic Relations Court**

**Judge: Judge Leslie Spillane**

**Issue or Action:**

Attorney for the plaintiff argued that the defendant did not report certain income in his 1992 income tax filing. **A copy of the tax filing showed that the defendant did report the income. Mr. Bressler’s allegation that he did not report it was not accurate and was later deemed not to be accurate by the 12th District Court of Appeals.**

Documents filed by Mr. Bressler claimed that Dr. Fallang failed to report \$36,000 in rental income in tax year 1992. According to Mr. Bressler, this amount should have been added to Dr. Fallang's reported income for tax year 1992, but was not disclosed in the filing. Judge Spillane agreed with Mr. Bressler and added \$36,000 to Dr. Fallang's income to determine the income basis for spousal support and child support.

It is not clear from the record that I have reviewed why Mr. Bressler believed that Dr. Fallang had not reported the disputed income. It is clear from the record, however, that both Mr. Bressler and Judge Spillane were in error in believing that Dr. Fallang had not reported the income as Mr. Bressler represented to the court; the income tax records of Dr. Fallang clearly showed the income as having been reported.

Judge Spillane apparently did not review Dr. Fallang's 1992 tax return, or if Judge Spillane reviewed it she missed it. Contrary to Mr. Bressler's representations to the court, Dr. Fallang's 1992 tax report filed with the Internal Revenue Service included the amount that Mr. Bressler claimed Dr. Fallang failed to disclose. The effect of this error was to double-count the disputed \$36,000, adding \$36,000 to Dr. Fallang's income on top of the original amount filed of \$146,000, which already included the \$36,000 in rental income. Counting the income twice along with other adjustments raised Dr. Fallang's annual income to more than \$185,000.

Even if Mr. Bressler believed that Dr. Fallang was hiding other income, the fact remains that the assertion that Dr. Fallang failed to report *this* \$36,000 on his tax filing with the IRS is false. It is also material in that, by using it to calculate the doctor's income for purpose of assigning spousal and child support, the double counting of \$36,000 inflates the doctor's income.

Dr. Fallang appealed this error to the 12th District Court of Appeals, pointing out to the court that the income was reported as required and was already considered in calculating the doctor's income. Mr. Bressler once again argued that the income was not reported arguing in a Dec. 19, 1994, brief to the appellate court's attorney that Dr. Fallang's 1992 tax return "did not include \$36,000 in rental income from a medical office condominium ..."

Amazingly, the 12th District Court of Appeals initially affirmed Judge Spillane's determination of income, stating that the doctor's net reported income "did not include Thirty-Six Thousand Dollars (\$36,000) in rental income from a medical office condominium ..."

In response to Dr. Fallang's appeal to the Ohio Supreme Court, on June 23, 1995, Mr. Bressler argued to the court that Dr. Fallang failed to report the \$36,000 in rental income, quoting the appellate court's erroneous decision to the Supreme Court.

On Sept. 20, 1995, Dr. Fallang again filed an action with the 12th District Court of Appeals, asking the court to correct the error in his income calculation. **On Dec. 1, 1997, the 12th District Court of Appeals reversed its earlier ruling and wrote: "In sum, we**

**hold that both the trial court and this court erroneously determined that appellant's (Dr. Fallang) annual income in 1992 exceeded \$185,000." The court stated, "Upon further review, however, it is apparent that the \$146,651 figure listed on line twenty-three of appellant's 1992 return did include all of appellant's rental income. Schedule E of appellant's 1992 return indicates that appellant did in fact declare \$36,000 in rental income."**

The matter was remanded to the trial court for "further proceedings consistent with this opinion [of the appellate court]." By this time, both Judge Spillane and Judge Mark Conese, then of the Butler County Domestic Relations Court, had recused themselves from hearing the case. A visiting judge had been appointed to hear the matter, Judge Stephen Yarbrough.

Pursuant to the appellate ruling that the trial court erred when it determined that Dr. Fallang failed to reveal \$36,000 in income, Dr. Fallang moved to have the trial court review and adjust the support calculations based upon the actual income filings. This time the plaintiff argued that the original trial court decision "did not rely upon the income tax return but instead relied upon the accountant's testimony ..."

More than 10 years has passed since the original filings, and the issue remains unresolved, although the 12th District Court of Appeals has ruled that the income calculation was erroneous. A dispute remains over whether Judge Yarbrough issued a final order on the matter of the income calculation. The judge appears to have ignored the appellate ruling that the income calculation was in error and held that the trial court decision on the income was correct (something the 12th District had already determined to have been in error), basically making no change in the income calculation. The issue now in dispute is whether the decision was issued correctly — it appears to have been issued under an erroneous case number, misfiled and never sent to Dr. Fallang so that he could again appeal the decision.

Noteworthy is that the court never showed any interest in determining the truth of the matter, and once having erred never questioned why Mrs. Fallang's attorney continued to argue something that, according to the 12th District Court of Appeals, was false.

Mr. Bressler's representation that Dr. Fallang failed to report \$36,000 on his 1992 income tax filing with the I.R.S. was false. It was false when it was first argued to the trial court, it was false when it was argued it to the Appellate Court, and it was false when it was argued it to the Supreme Court of Ohio.

How is this false representation compatible with the Code of Conduct adopted by the Ohio Supreme Court? Why did the court make no attempt to get an explanation on why or how the plaintiff argued that Dr. Fallang had failed to disclose \$36,000 in rental income for tax year 1992? Was it a simple mistake, negligence or deliberate? Did Judge Spillane simply not care? Does she believe that falsification and misrepresentation are acceptable parts of the game?

**The amazing thing about this issue is that something that could have been easily determined to be true or false has languished around the courts for more than 10 years. All a judge had to do to determine if Mr. Bressler or Dr. Fallang was correct was to look at Dr. Fallang's 1992 income tax filing.**

The Code of Professional Responsibility for attorneys says that a lawyer shall not “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” Every member of the bar swears to an oath stating that attorneys “will not knowingly assert any unwarranted claim ... or employ or countenance any undue influence, deception, falsehood, or fraud.”

Given these obligations, how could something so patently false have been asserted and accepted by the courts for so many years and not raise even one eyebrow? If the answer to this question is that Dr. Fallang also tried to mislead and deceive the court on other matters, as Mr. Bressler appears to argue when he says, “there were a number of additional income items received by the Appellant that did not appear on his personal income tax return,” then why were these issues not raised and addressed by the judge?

The issue here is not that one side misled the court and the other side did not. The issue is that the court seemed so passive and disinterested in even trying to protect the process from deceit.

**Documentation:**

Document: Fallang Doc #3  
Dec. 28, 1993, decision erroneously determining Dr. Fallang's income excluded \$36,000 in income.

Document: Fallang Doc #4  
Dr. Fallang's 1992 Federal Income Tax Return, showing the \$36,000 was included in his report of his income.

Document: Fallang Doc #5  
Mr. Bressler's representation to the court that “there were a number of additional income items received by the Appellant that did not appear on his personal income tax return.” (Document refers to \$36,000 in rental income for the medical office condo. as being excluded.)

Document: Fallang Doc #6  
Dr. Fallang's attempt to get the court to look at his 1992 tax filing so that it can see that he disclosed the \$36,000 in rental income.

Document: Fallang Doc #7  
Mr. Bressler's brief with the court representing that Dr. Fallang's 1992 net reported income “did not include \$36,000 in rental income from a medical office condominium.”

Document: Fallang Doc #8

Mr. Bressler's filings with the Ohio Supreme Court, in which he again represents that Dr. Fallang's 1992 income tax filing "did not include \$36,000 in rental income from a medical office condominium."

Document: Fallang Doc #9

Dr. Fallang's motion for relief from judgment "based upon fraud perpetuated upon the court by the Plaintiff and the Plaintiff's attorney, H.J. Bressler."

Document: Fallang Doc #10

Dec. 1, 1997, appellate court decision holding that "both the trial court and this court erroneously determined that the appellant's annual income in 1992 exceeded \$185,000."

Document: Fallang Doc #11

Judge Yarbrough Feb. 8, 1999, decision ignoring the 12th District Court decision and finding that Dr. Fallang's income for 1992 exceeded \$189,540.

Document: Fallang Doc #12

Copy of oath taken by members of the Bar (Pages 1401 and 1402).

Document: Fallang Doc #13

Code of Professional Misconduct.

*False witness:*

❖ False and Misleading Representation to the Court

**Case: Carole A. Fallang (Plaintiff) vs. David J. Fallang (Defendant)**  
**Case Number: DR91-11-2082**

**Court: Domestic Relations Court**

**Judge: Judge Leslie Spillane**

**Issue or Action:**

Mrs. Fallang, the plaintiff, filed three sets of DR602 forms with the court, each showing different monthly expense levels, ranging from \$3,010 to \$5,598. Plaintiff claimed that a loan of \$21,200 required her to pay more than \$2,000 monthly. The record does not reflect that the court ever sought to verify that the monthly payments cited on the DR 602 Form were actually made.

Perhaps part of this discrepancy could be explained by the different time frames in which the plaintiff filed the forms with the court. However, even if so, problems remain with the flow of facts as one sees the description of the monthly expenses evolve from one report to another.

Why did the reported \$2,000 monthly loan payment matter? Reporting the loan as a monthly obligation drove up her monthly expenses and, if accepted by the court, would therefore have set a higher basis for calculating the amount owed to Mrs. Fallang for spousal and child support.

The loan was reported for the period commencing January 1995 and again reported for December 1995, 11 months later. At a payment schedule of \$2,000 per month, which was the amount stated as the monthly loan payment on the DR 602 Form, the loan should have been paid off. If Mrs. Fallang paid \$2,000 per month towards the loan, how could the loan still be reported as owed at the end of the year?

The court made no attempt seek an explanation why the average monthly expense estimates varied so widely. For those who argue that the court bears no onus to make independent determinations of falsification, I suggest that the courts show no hesitation to act aggressively in areas in which they choose to become involved. The court could have determined easily whether the monthly loan repayment reported on the DR 602 form was occurring by requiring that the plaintiff produce copies of cancelled checks proving payment of claimed expenses.

The Domestic Relations Court Compliance Unit is a perfect example of selective proactive involvement by the court. If one accepts the argument that the court cannot independently check the veracity of documents filed with it, then why does the county spend more than \$250,000 annually for non-attorneys employed by the court to do just that?

Here is how the Domestic Relations Court describes the functions of the Compliance Unit:

“The Compliance Office approves pleadings that comply in form and content with Title III of the Ohio Rules of Civil Procedure, requirements of the Ohio Revised Code, and local rules of the Butler County Domestic Relations Court.

“The office assists the public and legal profession by assuring the quality of documents processed by the court, and increasing the efficiency of the court’s operation.

“The Compliance Office provides the public and legal community with answers to procedural questions; processes notices of intent to relocate; and supplies packets for dissolution of marriage, agreements to credit direct support payments, change of residential parent status, and change of parenting time.”

Why not assign the Compliance Unit the task of verifying the accuracy of DR 602 Forms when their accuracy is challenged? This type of compliance verification would be far more meaningful and useful to the public and parties appearing in court than checking to make sure the margins on motions filed with the court are properly spaced.

**Documentation:**

Document: Fallang Doc #14  
January DR602, showing average monthly expenses totaling \$5,598.

Document: Fallang Doc #15  
December DR602, showing average monthly expenses totaling \$3,726.

Document: Fallang Doc \$16  
Undated DR602, showing average monthly expenses totaling \$3,010.

*False witness:*

- ❖ False and Misleading Representation to the Court

**Case: Regina M. Songer (Plaintiff) vs. Douglas A. Songer (Defendant)**  
**Domestic Relations Case Number: DR89-06-1002**  
**Juvenile Court Case Number: JV 91-09-1951, 1950**  
**Common Pleas Court Case Number: CV93-05-0756**

**Court: Domestic Relations Court**  
**Juvenile Court**  
**Common Pleas Court**

**Judge: Judge Leslie Spillane**  
**Judge David Niehaus**

**Issue or Action:**

**Dr. Roger Fisher gave false testimony regarding the length of time he had been seeing the Songer Children for a period of two years.**

Dr. Roger Fisher falsely claimed he first saw children in November 1989. Client information form submitted by Dr. Fisher indicated that form was printed (from computer) on Nov. 2, 1989, listing Douglas Songer and his wife Regina as patients. Dr. Fisher also claimed that he first visited with the Songer children on April 13, 1989. The Songer Divorce was filed June 1, 1989.

This is the first of several instances in which Dr. Fisher provided inaccurate information to the courts regarding the depth on his involvement with the Songer children. The number, frequency and time frame of the therapy sessions is important in establishing the credibility of Dr. Fisher's observations. Obviously, if one believes that he has treated the children many times over a long time frame, then one is more likely to accept or give more credence to his observations.

Why does it matter? There is quite a difference in the weight of an opinion given by a doctor if a doctor says that he has been treating a patient for two years, having met with the patient numerous times, versus saying that he had only seen the patient one or two times.

**Documentation:**

Document: Songer Doc #1

Transcript of Dr. Fisher taken Nov. 5, 1991, in which Dr. Fisher claims he first saw the Songer children in November 1989. Dr. Fisher claims that their mother, who was referred to him by attorney Victoria Daiker, brought them to him. On Page 5, line 1, Dr. Fisher testifies he first saw children on April 13, 1989.

Document: Songer Doc #2

Client Information form printed Nov. 11, 1989, submitted by Dr. Roger Fisher.

Document: Songer Doc #3

Case Index indicating when the divorce was filed, June 1, 1989.

Document: Songer Doc #4

Affidavit provided by Dr. Fisher on Aug. 23, 1993, stating, contrary to his previous testimony, that he had “been providing psychological treatment to the Songer Children since April 17th, 1991.” Dr. Fisher further admits that, “at various times I may have made mistakes in my sworn testimony concerning the time frame or number of sessions in which I have been involved in therapy with the Songer children.”

*False witness:*

- ❖ False and Misleading Representation to the Court

**Case: Regina M. Songer (Plaintiff) vs. Douglas A. Songer (Defendant)**  
**Domestic Relations Case Number: DR89-06-1002**  
**Juvenile Court Case Number: JV 91-09-1951, 1950**  
**Common Pleas Court Case Number: CV93-05-0756**

**Court: Juvenile Court**

**Judge: Judge David Niehaus**

**Issue or Action:**

**Dr. Roger Fisher again gave false testimony regarding the length of time and the frequency that he had been seeing the Songer children.**

Dr. Fisher testified Dec. 19, 1991, that he has worked with the Songer children for about two years. If true, Dr. Fisher first worked with the Songer children in 1989. Dr. Fisher said he had seen the children about once every two or three weeks during the treatment period. Dr. Fisher stated he never tested the children, had no recordings of his sessions with them, and promised in testimony to make a copy of his file on the Songer children and provide it to Mr. Songer's attorney.

Later, in answer to an interrogatory, Dr. Fisher claims that he first saw the children in April 1991 — not 1989. Dr. Fisher says that attorney Victoria Daiker referred Mr. Songer's ex-wife and children to him for evaluation.

**Furthermore, and contrary to what Dr. Fisher had previously told the court, Dr. Fisher testified and provided sworn statements that he had only been seeing the children since April 1991. This time frame is significant, because other documents show that Dr. Fisher's representation that he had been seeing the children every two or three weeks since he initially saw them cannot be accurate.** Also noteworthy, Dr. Fisher stated that he did not evaluate Mr. Songer, nor did he test the children.

The referral of the children and their mother to Dr. Fisher is further significant because Mrs. Daiker, acting as a private attorney, was then representing the mother in her divorce action and at the same time Mrs. Daiker, through her position with the Butler County Prosecutor's Office, was an attorney for the Domestic Relations Court and Juvenile Court and for the Children Services Board. Did Mrs. Daiker have a conflict and did her referral receive special consideration because of her role as lawyer for the agency to whom the abuse complaint had been referred?

**Documentation:**

Document: Songer Doc #9

Dr. Fisher testimony on Dec. 19, 1991, Pages 12, 14 and 32.

Document: Songer Doc #10

Dr. Fisher testifies that he never tested the children.

Document: Songer Doc #11

Mr. Songer's attorney requests copies of Dr. Fisher's files relating to the Songer children.

Document: Songer Doc #12

Interrogatory response by Dr. Fisher. Claims he first interviewed the Songer children on April 17, 1991.

Document: Songer Doc #13

Affidavit of Dr. Roger Fisher.

*False witness, court shopping:*

❖ **False and Misleading Representation to the Court**

**Case: Regina M. Songer (Plaintiff) vs. Douglas A. Songer (Defendant)**  
**Domestic Relations Case Number: DR89-06-1002**  
**Juvenile Court Case Number: JV 91-09-1951, 1950**  
**Common Pleas Court Case Number: CV93-05-0756**

**Court: Juvenile Court**

**Judge: Judge David Niehaus**

**Issue or Action:**

**Children Services caseworker, Cindy Hayes, gave false testimony regarding Mr. Songer's alleged medical neglect of his children.**

On Sept. 26, 1991, the Children Services Board filed an abuse complaint against Mr. Songer. Among other things, the complaint alleged, "Mr. Songer neglected obtaining medical help for his son and this neglect caused the child to be hospitalized." The complaint also alleged that the child displayed a medical condition thought to be stress-related and originating with Mr. Songer. The CSB caseworker, **Ms. Cindy Hayes, said she relied *entirely* upon a report from Dr. Fisher as the basis for filing the complaint against Mr. Songer.**

The complaint was initiated in Juvenile Court following a decision by the Domestic Relations Court that awarded joint custody to the parents, giving Mr. Songer custody of the children during the summer. Hence, from the first of June 1991 through the end of August 1991, both children lived with their father.

During their time with their father (that summer), there is no record that they had any visits with Dr. Fisher. Hence, if the children first saw Dr. Fisher on April 17, 1991, the number of visits they could have had with Dr. Fisher is likely to be only two to four, far fewer than the numerous times (every two or three weeks) that Dr. Fisher testified. The children returned to live with their mother at the beginning of the new school year in September 1991.

Dr. Fisher gave inaccurate testimony at the Dec. 19, 1991, hearing in Juvenile Court claiming that he had been seeing the Songer children every two or three weeks for nearly two years. Two years later Dr. Fisher signed an affidavit stating that he had first met the Songer children on April 17, 1991, not December 1989 as his testimony had initially indicated.

The fact that the issues in this case had already been reviewed and decided by the Domestic Relations Court was lost on the Juvenile Court. It appears that, like far too many other people, Mrs. Daiker, unhappy with the results of the hearing in Domestic

Relations Court, attempts to insinuate the Juvenile Court into the process by referring the matter to Dr. Fisher for his review and recommendations. He eventually contacted the children's services agency. Getting the Juvenile Court involved gave her client another bite of the apple.

This procedural "judge shopping" provided a means of ignoring the Domestic Relations Court's orders and gave Mr. Songer's ex-wife an opportunity to start the whole custody battle over again. In the course of bringing the matter before the Juvenile Court, there are numerous examples of the court being misled and manipulated by inaccurate testimony.

**Documentation:**

Document: Songer Doc #14  
CSB complaint alleging abuse and neglect against Mr. Songer.

Document: Songer Doc #15  
Domestic Relations Court order regarding joint custody of Songer children.

Document: Songer Doc #16  
Victoria Daiker letter to Dr. Roger Fisher.

(For documentation of the inaccurate testimony given by Dr. Fisher in the Dec. 19, 1991, hearing refer to Songer Doc's #9, 10, 11, 12, 13, and 14).

*False witness:*

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**Court: Juvenile Court**

**Judge: Judge David Niehaus**

**Issue or Action:**

**Dr. Roger Fisher and Children Services Caseworker Cindy Hayes made false statements and gave false testimony regarding the medical neglect allegation they brought against Douglas Songer.**

Dr. Fisher wrote a letter to Cindy Hayes expressing his concerns about the Songer children. Dr. Fisher falsely wrote, "Mr. Songer waited too long before obtaining medical

help for the boy's condition. By the time he was treated, [the son] was suffering from a severe bowel impaction and had to be hospitalized.”

Having neither reviewed the child's medical records nor consulted with the attending physician, Dr. Fisher apparently speculated on what the relevant medical records would show, accused Mr. Songer of behaving in an “outrageous way” towards medical staff (not supported by any evidence in the record) and indicated that Dr. Ellen Buerk, the child's attending physician, would confirm his diagnosis. At no time did Dr. Fisher speak to Dr. Ellen Buerk prior to writing his letter to the Children Services Board alleging medical neglect.

When asked directly about Dr. Fisher's contention that Mr. Songer had medically neglected his son, Dr. Buerk, the son's treating physician, testified that Mr. Songer had not in any way disregarded medical care for his children.

Dr. Fisher testified at the Dec. 19, 1991, hearing that he had “seen the children many times ... about every two or three weeks for two years.” Mr. Songer eventually produced insurance billing information indicating that Dr. Fisher only billed the insurance company for visits with the children in April and September of 1991.

The accurate records of the number of visits could have been determined easily, had Dr. Fisher complied with the request made at the Dec. 19, 1991, hearing to give Mr. Songer a copy of the file. This was never done.

Mr. Songer brought the issue of possible perjury to the attention of the court. The Juvenile Court dismissed the motion, claiming it lacked jurisdiction to deal with fraud. Mr. Songer filed the motion himself and may have filed a technically defective motion; regardless, once his motion was filed, the Juvenile Court was on notice that certain testimony had been false.

Contrary to the Juvenile Court ruling, I believe that the court has the discretion and authority to sanction any witness for giving false testimony any time the court chooses to do so, if the court changes the local rules to require witnesses to “tell the truth” when under oath or giving the court sworn statements and notifies witnesses that they are under order to do so. Why would this rule be any different than a rule prescribing how large the margins should be in documents filed with the court? Ms. Doerman actually had an appeal rejected by the 12th District Court of Appeals because her margins were different from the standards prescribed by Court Rule.

By, in effect, issuing an order to tell the truth, why couldn't the court hold witnesses in contempt for failure to comply with a court order? At the very minimum, the court has the authority to make referrals regarding wrongdoing to the appropriate oversight bodies and to the prosecutor.

This is the same theory that a court uses when it holds a person in contempt for failing to answer a question when ordered by the court. For example, if a court has the authority to

hold a witness in contempt for not answering a question, then why doesn't it have the authority to sanction those who answer questions falsely?

Courts have even held news reporters in contempt for failing to answer a question about a source. Why then, under the same authority, can't the court hold someone in contempt for misleading it, particularly if an attorney or professional participates in the transaction?

**Documentation:**

Document: Songer Doc #18

Dr. Fisher's letter to Cindy Hayes reporting alleged abuse and medical neglect.

Document: Songer Doc #19

Dr. Buerk's testimony at a Dec 19, 1991, hearing on the abuse charge in Juvenile Court.

Document: Songer Doc #20

On May 23, 1993, Mr. Songer files a motion with the Juvenile Court giving "notice of perjury," alleging that Dr. Fisher was not truthful in his testimony at the Dec 19, 1991, hearing regarding the abuse charge. Mr. Songer cites insurance records indicating that Dr. Fisher only billed for seeing the children in April and September of 1991. Dr. Fisher had testified that he had seen the children once every two or three weeks for about two years.

Document: Songer Doc #21

Songer Motion to have the Juvenile Court deals with the issue of fraud.

Document: Songer Doc #22

Order and Judgment of the Juvenile Court dismissing Mr. Songer's motion regarding fraud saying that "court is without jurisdiction to consider fraud ..." Mr. Songer's motion relating to perjury is ignored; it has never been ruled on.

Document: Songer Doc#9

Dr. Fisher's testimony before Juvenile Court on Dec 19, 1991.

*False witness:*

- ❖ False and Misleading Representation to the Court

**Case: Regina M. Songer (Plaintiff) vs. Douglas A. Songer (Defendant)**  
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**Juvenile Court Case Number: JV 91-09-1951, 1950**  
**Common Pleas Court Case Number: CV93-05-0756**

**Court: Juvenile Court**

**Judge: Judge David Niehaus**

**Issue or Action:**

**Children Services Caseworker Cindy Hayes provided false and misleading testimony to Juvenile Judge David Niehaus. The testimony of the Children Services Board's caseworker, Cindy Hayes, was riddled with inaccuracies, misrepresentations, false statements and prejudicial innuendo.**

Ms. Hayes testified that, in deciding whether to file a complaint against Mr. Songer, in addition to talking to Mr. Songer and the children, she had "collateral contacts with Dr. Fisher, Dr. Buerk, and Ms. Osner" (ex-Mrs. Songer). She testified that the initial complaint was brought to her in late June 1991 (June 26 — just days after Judge Spillane, Butler County Domestic Relations Court, awarded the parents joint custody).

She testified that she initially made one visit with the children during the summer of 1991 and did not see the children again until they returned home to their mother at the beginning of the new school year in September.

She said that she filed the abuse complaint against Mr. Songer on September 26, after receiving a letter from Dr. Fisher and speaking to him once on the phone.

Ms. Hayes was asked directly to list the people she had contact with prior to filing her complaint and she answered, "Dr. Buerk" (Page 22). Ms. Hayes was asked if she talked to Dr. Buerk between June 26, 1991, and Sept. 26, 1991 (the period between the initial complaint and the filing of abuse charges), and she answered that Dr. Buerk had told her that Mr. Songer was not neglectful (Page 23 of testimony). A reasonable person would infer from her testimony that she had talked to Dr. Buerk prior to filing the complaint.

Mr. Songer's attorney asked Ms. Hayes to explain why, if she had talked to Dr. Buerk and Dr. Buerk had told her that Mr. Songer had not neglected the medical needs of his children, she claimed in her complaint that Mr. Songer had medically neglected his son. She answered that she relied on Dr. Fisher's letter.

Once again, Mr. Songer's attorney stated in the form of a question: **"And those three people (Dr. Fisher, Dr. Buerk and Mrs. Osner) you collaborated from June through September?"** She answered, **"Plus I had conferences with my supervisor."** Ms. Hayes clearly implied that she had consulted with Dr. Buerk prior to filing her complaint.

She claimed that Dr. Buerk called her "out of the blue, without me calling her and said ... no neglect." Ms. Hayes claimed that her decision to file a complaint was based entirely on Dr. Fisher's letter of September 24.

On Page 28 on the testimony, **Ms. Hayes finally admitted that she never did talk to Dr. Buerk prior to filing the complaint. In fact, she said that she did not even try to contact the child's pediatrician regarding the issue of medical neglect, and that Dr.**

**Buerk called her after the complaint had been filed to tell her that there was no medical neglect involved. She said that this conversation took place in October 1991. Again, on Page 30 Ms. Hayes said that she did not talk to Dr. Buerk prior to filing the report.**

Ms. Hayes' representation that she had talked to Dr. Buerk prior to filing a complaint for medical neglect is troubling. **Clearly the testimony was inaccurate, and she eventually conceded that it was not true.**

Most troubling, perhaps, is what it says about the quality of the investigation. How is it possible that a professional investigator could investigate a medical neglect complaint involving a child and not talk to the child's physician prior to filing the complaint? Why did she wait eight weeks before filing a complaint?

Neither did Ms. Hayes offer any specific observations regarding the emotional-abuse charge based on her conversations with the children. In fact, it appears that her contact with the children in addressing the core complaints seems to have been minimal or none. At least one can reasonably draw that inference from her testimony. She testified that she relied "entirely" on Dr. Fisher's report to form her opinion.

**Documentation:**

Document: Songer Doc #23

Testimony of Ms. Cindy Hayes, CSB caseworker, on Dec.19, 1991. Refer to Pages 4,6,7,17,18,20,21,22,23,24,25,26,27,28,29,30,31.

*False witness:*

- ❖ False and Misleading Representation to the Court

**Case: Regina M. Songer (Plaintiff) vs. Douglas A. Songer (Defendant)  
Domestic Relations Case Number: DR89-06-1002  
Juvenile Court Case Number: JV 91-09-1951, 1950  
Common Pleas Court Case Number: CV93-05-0756**

**Court: Juvenile Court**

**Judge: Judge David Niehaus**

**Issue or Action:**

**Dr. Roger Fisher gave a misleading response to an interrogatory regarding his role in bringing charges against Doug Songer.**

Dr. Fisher swore in an affidavit Aug. 23, 1993, that he never "instituted or caused to be instituted criminal proceedings against or involving Douglas Songer." But on July 15,

1991, Dr. Fisher wrote to Bruce Fassler, prosecutor for the city of Middletown, in support of criminal charges, claiming that he “urged Ms. Osner (Mr. Songer’s ex-wife) to file charges of theft against her ex-husband” (Mr. Songer). The charges against Mr. Songer were dismissed.

The letter in which Dr. Fisher admitted that he “urged Ms. Osner to file charges of theft against her ex-husband” was at odds with his sworn affidavit in which he denied having caused or having instituted criminal proceedings against Mr. Songer. Mrs. Songer did file charges against her ex-husband, but the prosecutor chose not to prosecute. **Dr. Fisher’s statement may have been “technically correct,” since only the prosecutor can cause a charge to be filed, but it certainly was not truthful in the sense of the standard that normal people would use to establish the accuracy of a statement.**

**Documentation:**

Document: Songer Doc #4  
Affidavit of Dr. Roger Fisher, Aug. 23, 1993.

Document: Songer Doc # 17  
Dr. Fisher’s letter to Middletown Prosecutor, Bruce Fassler wherein he admits that he advised Mr. Songer’s ex-wife to file charges against him for theft.

*False witness:*

❖ False and Misleading Representation to the Court

**Case: David A. Doerman (Plaintiff) vs. Cathy Doerman (Defendant)**  
**Domestic Relations Court Case Number: DR98-11-1798 (CA00-05-0092)**

**Court: Domestic Relations**

**Judge: Judge Sharon Kennedy**  
**Judge Stephen Yarbrough**

**Issue or Action:**

**Dr Roger Fisher falsely testified that he met with Ms. Doerman’s son while Ms. Doerman was in jail. The child was not in Butler County at the time; he was attending school in Summit County, Ohio.**

Ms. Doerman was in the Butler County Jail from April 18 to 24, 2000, on a contempt citation for denying her husband his court-ordered visitation rights. Dr. Fisher misrepresented how many times he had seen Ms. Doerman’s son; according to Dr. Fisher’s later testimony, he had in fact seen the child alone once, on March 11, 2000.

Dr. Fisher's testimony that he had visited with Ms. Doerman's son while she was in jail was not accurate. And Dr. Fisher's testimony regarding what the son allegedly told him while his mother was in jail could not have been accurate.

Why does it matter? It matters because Dr. Fisher was trying to persuade the court that the child and the grandparents would clash in ugly and uncomfortable confrontations if the court were to allow the child's mother to have custody of him. To make this point, Dr. Fisher related to the court that the son told him of an incident in which Ms. Doerman's mother accosted the son while Ms. Doerman was in jail.

Dr. Fisher used the story to support his argument that the mother should not have custody of the child because the maternal grandparents would harass him. What if the conversation never took place? Well, if it ever did take place, it could not have taken place when Dr. Fisher said it did.

Furthermore, even if one allows that Dr. Fisher could have been confused in relating something he thought the son told him, the son denied that it ever happened. So did Dr. Fisher make it up? Regardless, the court relied on his testimony, now demonstrated to have been false, and followed his advice on the placement of the son.

**On April 28, 2000, Dr. Fisher testified that he has had counseling sessions with the son at least three times** and had formed an opinion based on his conversations with the son about the custody of the son ("I've seen him twice individually"). (Document #15, Page 5, lines 14 and 15; Page 10, line 14.)

In the April 28 hearing, Dr. Fisher testified that he spoke to the son "while his mom was in jail." Dr. Fisher then related in detail what he claims the son told him during the counseling session — that he was returning to his mother's house with his grandmother to pick up a book bag he needed for school, and a major confrontation occurred. (Document #15, Pages 10 through 12, all lines.)

Ms. Doerman's attorney objected to Dr. Fisher relating his conversation with the son, arguing that it was: "Hearsay within hearsay." The court overruled the objection, allowing Dr. Fisher's testimony, declaring, "It's the basis upon which he's formed his opinion." (Document #15, Page 12, lines 3,4 and 5.)

The judge then asked Dr. Fisher: "This is what [the son is] relating to you in counseling?" Dr. Fisher answered, "Yes." (Document #15, Page 12, lines 6 through 9.)

The judge, apparently believing Dr. Fisher's testimony about an incident regarding the son and his grandmother while the mother was in jail, asked Dr. Fisher: "What protects [the son] from being accosted by any family member when he goes?" (Document #15, Page 39, lines 13 through 17.) It is clear that the court believed Dr. Fisher's testimony.

Mr. Doerman testified that [on April 18] her husband's mother took their son back "up to school ... so he could be in school the next day." At the time, the son attended school in

Summit County, Ohio. Ms. Doerman asserted that her son was in school in Summit County, Ohio, at the time that Dr. Fisher claimed to have had a counseling session with him. (Document #15, Page 61, lines 4 and 5.)

At a July 24, 2000, hearing, the son testified that he had not seen a counselor in a long time. When the guardian ad litem asked the son: “Now ... you say you’ve never been to counseling just for yourself. Correct?” The son answered: “Correct.” (Document #16, Page 29, lines 17 through 20, and Page 30, lines 8 and 9.)

**On July 18, 2000, Dr. Fisher testified that he only saw the son “by himself” one time, and that during a “family” session. Dr. Fisher testified that the one session he had with the son occurred on “March the 11th, 2000.”** (Document #17, Page 92, lines 15 and 16; Page 93, lines 1 through 4; Page 96, line 25; and Page 97, line 1).

**This testimony is significant because it contradicts Dr. Fisher’s April 28, 2000, testimony that he had at least three counseling sessions with the son and that he had a counseling session with him while his mother was in jail. The mother went to jail 38 days after Dr. Fisher saw the son for his one and only counseling session on March 11, 2000.** Hence, the son could not have related to Dr. Fisher an incident that allegedly occurred while the mother was in jail.

The court, in reliance upon Dr. Fisher’s inaccurate April 28 testimony, gave custody of the son to the father. (Document #18 Pages 10 lines 14 through 20, and Page 71.)

**Documentation:**

Document: Doerman #15:  
April 28, 2000: Hearing and Transcript of Proceedings.

Document: Doerman #16:  
July 24, 2000: Hearing and Transcript of Proceedings.

Document: Doerman #17:  
July 18, 2000: Hearing and Transcript of Proceedings.

Document: Doerman #18:  
April 28, 2000: Hearing and Transcript of Proceedings and Judge’s Decision.

## **Findings:**

My review of these few cases identified 13 instances in which a witness, plaintiff, defendant or attorney provided the court with false information. In each example, the false or misleading testimony or statement was brought to the attention of the court. In each of the examples, the false information related to a matter of importance in reaching a decision about how to dispose of the case.

At no time did the court take any action to punish or even admonish those responsible. No referrals were made to the Prosecuting Attorney's Office. No sanctions were taken against offending attorneys. No witnesses were held in contempt or prosecuted. The court spoke not one word to remind those testifying that they must tell the truth.

My review of the cases that came to the County Commission reveals that, contrary to what Judge Spillane and Judge Niehaus have said, in several instances judges and magistrates of the Butler County Domestic Relations Court and the Juvenile Court did nothing when witnesses gave false testimony in their presence.

This review documents instances in which evidence was clear and compelling that statements given in sworn testimony were false and misleading. Despite the clouds on the truth of the testimony or documents filed with the court, there was not one instance in which the court referred any issue to the prosecutor for investigation of perjury.

In only one instance did the court admonish a witness that the witness's statements could be subject to perjury charges if proven untrue; ironically, that caution was directed to Ms. Cathy Doerman, who had complained to the court that Dr. Fisher had misled the court in his testimony.

The Doerman case is instructive on the issue of falsification. When Ms. Doerman protested that she could not longer afford to pay for an attorney and asked that one be appointed, the judge told her that she could fill out the forms requesting indigent status, but that she needed to know that if she falsely reported her income on the court's form, she could be prosecuted for perjury.

The Doerman case is also noteworthy because, in several other cases reviewed for this report, forms filed with the court and testimony given to the court contained false information regarding income. One would have expected the court to admonish those providing the false and misleading information or testimony in the same manner the judge admonished Ms. Doerman, but the court said nothing about it and took no action.

To repeat, the recounting here of false representations says nothing about whether other parties to the cases cited thought that the persons complaining to me also made false representations to the court. In each instance I have cited the specific portion of the record that documents the allegation being made. There are undoubtedly other instances of falsification that are not documented in this review.

For other parties to argue that those complaining here also misled the court further advances my point. The most striking finding is the court's casual attitude about witnesses not telling the truth. When people involved in these cases witness someone giving false testimony or misleading the court and getting away with it, their respect for the judicial system in general and the courts in particular is eroded.

To be sure, much of what is said in testimony is a matter of context, understanding and perspective. Two people can see the same event or hear the same conversation and remember or interpret it differently. I am not suggesting that the standards be so stringent that normal human frailties and conditions collide with court procedures.

I am referring to information that has an objective truth or falsity. When someone says or represents something, as in these examples, that can be proven false by irrefutable documentation, then the court has every justification to act. A simple standard of common sense should apply. It is not reasonable to review these examples and conclude that those who engaged in them did so unintentionally. A reasonable person could conclude that often times their actions were purposeful and knowing. Each time the court allows the truth to be compromised, the public's faith in justice and the integrity of the judicial system suffers and is eroded.

### **Recommendations:**

- The Domestic Relations Court and Juvenile Court of Butler County should adopt a Rule and Procedure whereby they remind each person testifying that he or she is under oath, and that if he or she fails to tell the truth or misleads the court, he or she may be referred to the prosecutor or held in contempt by the court.
- The Domestic Relations Court and Juvenile Court of Butler County should adopt a Rule providing that attorneys who violate the canon of ethics with respect to falsification, misrepresentation or misleading the court will be sanctioned, held in contempt or referred to the Disciplinary Counsel of the Ohio Supreme Court.
- The Domestic Relations Court and Juvenile Court of Butler County should annually send a copy of the Rule proposed above to all members of the Butler County Bar Association. If a witness, plaintiff, defendant or attorney violates these rules, the judges of the Domestic Relations Court and Juvenile Court of Butler County should exercise their authority and enforce penalties against those who are found to be in violation.
- The Domestic Relations and Juvenile Court should appoint a Compliance Officer and charge that person with receiving complaints about false statements and investigating them to determine if the information given to the court is false or misleading. This function is no different than the function presently performed by the Compliance Unit of the Domestic

Relations Court. If the Domestic Relations Court has the authority to review all documents filed with the court to determine whether they comply with court rules on format and other provisions of the Ohio Revised Code, then the court certainly has the authority to enforce compliance with the obligation to tell the truth in testimony and filings with the court. Any party to a case should be able to file a complaint with the court whenever the party believes a witness has given false, inaccurate or misleading information to the court. The standard for acting on such a complaint should be that the complaint is subject to independent or objective verification as to its falsity. For example, if the complaint involves one person's word against another person's, then the court would not have a basis to independently determine the truth. If, however, a falsification that can be independently proven, such as the examples cited in this study, then the court could act accordingly. Providing an independent channel through which individuals could ask the court to review the truthfulness of testimony would open up the process and create an environment more likely to promote truthful testimony.

## **Ex-Parte Communications and Procedural Failures**

*Ex-parte communications, hollow orders, lack of record, hollow procedures:*

- ❖ Examples of Procedures Inconsistent With the Court Rules, Orders, or Contrary to Law

**Case: David A. Doerman (Plaintiff) vs. Cathy Doerman (Defendant)**  
**Domestic Relations Court Case Number: DR98-11-1798 (CA00-05-0092)**

**Court: Domestic Relations**

**Judge: Judge Sharon Kennedy**  
**Judge Stephen Yarbrough**

### **Issue or Action:**

**When ex-parte communications and violations of judicial orders occur, no record is made and individual interests are adversely affected.** Had Judge Kennedy recorded her phone conversations with Dr. Fisher, there would be no dispute over what he was ordered to do or not do with respect to his involvement with Ms. Doerman's daughter.

While Ms. Doerman was in the Butler County Jail for contempt of court, Dr. Roger Fisher had a "counseling" session with Ms. Doerman's daughter, who was confined to the Butler County Juvenile Corrections Facility. Judge Kennedy was concerned that the girl needed counseling while at the JDC and asked Dr. Fisher to see the child. Judge Kennedy placed restrictions on Dr. Fisher, saying that his role was merely to make sure that the girl was helped professionally if needed, and that Dr. Fisher was not to use any information gained through the counseling sessions in Juvenile Court proceedings.

Contrary to Judge Kennedy's stated desire, Dr. Fisher became involved in the Juvenile Court action involving Ms. Doerman's daughter, and he did use information obtained during the counseling session he had with the child while she was at JDC.

**How was it that Dr. Fisher released information derived from his counseling sessions with the child to the guardian ad litem for use in the Juvenile Court, when Judge Kennedy specifically prohibited the release of such information? Why was no record made available of ex-parte conversations between Judge Kennedy and the child's attorney and between Judge Kennedy and Dr. Fisher?**

Another dispute arose over whether the lawyers asked Judge Kennedy to contact Dr. Fisher and request his professional involvement in the daughter's case (daughter was being held at the Juvenile Detention Facility), or whether the judge initiated the contact.

This issue matters because the contact constituted an ex-parte contact between the judge and Dr. Fisher, of which there is no record. Furthermore, there was a concern that Dr.

Fisher's involvement could later be used against the daughter in her hearing before the Juvenile Court. Judge Kennedy was apprised of that concern and said that she intended to limit Dr. Fisher's role to that of counseling the daughter, and that nothing related to his contacts with her could be used against the child in Juvenile Court (there was a patient-client relationship). Judge Kennedy states that she advised Dr. Fisher and all people involved in the case (including the guardian ad litem) of her wish not to have Dr. Fisher's contact with the child used in the Juvenile Court proceedings.

So how did it happen that Judge Kennedy made direct contact with Dr. Fisher and apparently engaged in an ex-parte conversation for which there is no record? Judge Kennedy, speaking on the record, represented that both lawyers agreed that neither of them wanted to call Dr. Fisher and asked the judge to do it. At one point in the transcript, Judge Kennedy said that she called Dr. Fisher and left a message, leaving the impression that she did not speak directly with Dr. Fisher. Judge Kennedy and Dr. Fisher — later in separate accounts — said that they did talk with each other.

Judge Kennedy said that the call involving the lawyers and conversations about Judge Kennedy calling Dr. Fisher was recorded. Judge Kennedy said that her conversation with Ms. Stephenson (the child's attorney) also was recorded.

Regarding whether the child should receive counseling from Dr. Fisher while at the Juvenile Detention Center, Judge Kennedy said that both lawyers wanted counseling to resume. However, the transcript indicates that it was the court that sought the involvement of Dr. Fisher (to visit the child while she was in the Juvenile Detention Center). Neither attorney requested Dr. Fisher's involvement on the record, and at least one attorney expressed caution that Dr. Fisher's involvement must not be used against the child in Juvenile Court.

The court agreed that Dr. Fisher's involvement would stay outside the realm of Juvenile Court, but contrary to the limitations that Judge Kennedy placed on Dr. Fisher's involvement, he later sent a letter for use in the Juvenile Court proceedings — a letter that the Juvenile Court accepted as part of the court record — that offered an opinion directly affecting the child's interests before the Juvenile Court.

The only conversation relating to this matter for which a record exists shows that the court (Judge Kennedy) — not the lawyers — initiated contact with the lawyers to request Dr. Fisher's involvement. The record shows that Judge Kennedy's recollection that neither lawyer wanted to call Dr. Fisher is not accurate. Attorney Lynn Lampe made several offers to the judge during the conversation to make contact with Dr. Fisher, and the other attorney expressed no opinion one way or another. There is no record that attorney Greg Beane, the guardian ad litem for the child, was present for these ex-parte conversations with Judge Kennedy.

The judge stated on the record that she recorded these conversations (those involving the lawyers, Dr. Fisher and the child's attorney, Nicole Stephenson), but when Ms. Doerman requested copies of the phone conversations, the court transcriber informed Ms. Doerman

in writing that a recording of the ex-parte conversation between Judge Kennedy and the attorneys did not exist.

Ms. Doerman later learned of the existence of and received copies of transcripts for at least three conversations involving Mr. Davis, the judge and Ms. Lampe: April 19, 2002, and two separate conversations on April 21, 2000. Ms. Doerman learned of and received a transcript of an April 28 ex-parte conversation between Judge Kennedy and guardian ad litem Beane.

Judge Kennedy indicated in a conversation with Mr. Davis and Ms. Lampe that she talked to Ms. Stephenson, lawyer for the child. Upon learning of the existence of that ex-parte conversation between the judge and the child's attorney, Ms. Doerman requested a copy of it. The court refused to make a copy available to her. The prosecutor moved to quash the motion to grant her access to the transcript of the conversation. She has not received a copy of that conversation. Judge Kennedy related in the record that the child's attorney had objected to Dr. Fisher talking with the child if such contact would be used in the Juvenile Court proceedings.

The conversations between the judge and the lawyers for which a record exists show that those conversations did not include the child's attorney (Ms. Stephenson) or guardian ad litem (Greg Beane) — only the lawyers for Ms. Doerman and Mr. Doerman. The child had a right to be represented in those discussions, and later the child was adversely affected by the involvement of Dr. Fisher in her case when, contrary to the limitations the judge said she placed on his involvement, Dr. Fisher's findings and recommendations became part of the Juvenile Court record.

Dr. Fisher suggested that, rather than allow the child to go with her grandparents, the child remain in the detention center until her mother was released from jail, and upon the mother's release Dr. Fisher recommended that the child be given a choice between cooperating with the visits with her father or being placed in foster care.

The entire record is replete with examples of ex-parte conversations, some recorded and others apparently not recorded. Furthermore, one of the key conversations — one between Judge Kennedy and the child's attorney — has not been made available to Ms. Doerman, nor has a recording of the conversations between the judge and Dr. Fisher. These omissions eliminated from the record the critical substantive conversations involving the court, the child's attorney and Dr. Fisher. The appropriateness of a judge having these ex-parte conversations is questionable, but having them without making a record is a serious breach of process.

The two main issues revealed in these exchanges are: 1) The judge's description of the sequence and substance of events regarding how Dr. Fisher became involved as a counselor while the child was at the Juvenile Detention facility was at odds with the record; and 2) **Dr. Fisher apparently defied Judge Kennedy's admonition not to allow his work with the child to become "bootstrapped" (to use Judge Kennedy's phrase) into the Juvenile Court proceedings involving the child, by sending a letter**

**containing recommendations on how to deal with the child to the guardian ad litem. Contrary to the restrictions placed on Dr. Fisher by Judge Kennedy, this letter was used in the Juvenile proceedings.**

How could Dr. Fisher send this communication in violation of the patient-doctor privilege? **This is particularly significant when one considers that Judge Kennedy stated that the child's attorney "didn't want him (Dr. Fisher) to talk to her (the child) if I was going to extend my release (Judge Kennedy) to Juvenile." According to Judge Kennedy, the child's attorney specifically did not authorize Dr. Fisher to release any of his findings to the Juvenile Court, but Dr. Fisher apparently did so anyway.**

The mystery over who said what to whom could be somewhat resolved if the tape of the conversations Judge Kennedy had with the child's attorney were released. Why did the court refuse to release the copy of the taped conversation between Judge Kennedy and the child's attorney?

**Documentation:**

Document: Doerman Doc. #1:

Transcript of Proceedings June 7, 2000; Page 11, lines 16 through 25, and Page 12, lines 1 through 25.

Document: Doerman Doc. #2:

Letter to Ms. Doerman dated April 25, 2001, stating that no records of the April 19 through April 22, 2000, conversations are available.

Document: Doerman Doc. #3:

April 19, 2000, recorded transcript of Judge Kennedy's conversation with Ms. Lampe and Mr. Davis.

Document: Doerman Doc. #4:

April 21, 2000, (misabeled 2001 by the transcriber) recorded transcript of Judge Kennedy's conversation with Ms. Lampe and Mr. Davis (neither the child's attorney nor the guardian ad litem are present for the conversation).

Document: Doerman Doc. #5:

April 21, 2000, transcript of recorded phone conversation among Judge Kennedy, Mr. Davis and Ms. Lampe. In this conversation, Judge Kennedy states that she spoke to the child's attorney, Ms. Stephenson, who the judge says has no problem with the child seeing Dr. Fisher, provided the Juvenile Court does not use Dr. Fisher's material.

Document: Doerman Doc. #6:

April 28, 2000, transcript of ex-parte conversation between Judge Kennedy and guardian ad litem for child, Greg Beane. The guardian states that, if another psychologist besides Dr. Fisher were to see the child, there "may be recommendations that are counter or

contrary to what's being suggested by Dr. Fisher.” The guardian recommended that the child's counseling regarding visitation matters (this is a critical issue with respect to a later motion filed by Ms. Doerman regarding Dr. Fisher's role in the visitation process) be done “solely through Dr. Fisher.”

Document: Doerman Doc. #7:

Letter by Dr. Fisher to guardian ad litem, Greg Beane, regarding matters pending before the Juvenile Court. Contrary to the instructions and limitations set forth by Judge Kennedy, the guardian submitted the letter to the Juvenile Court, which used it in deliberations.

Document: Doerman Doc #8:

April 24, 2000; Page 11, lines 1 through 8, transcript of proceedings in which Judge Kennedy says she told Dr. Fisher that he was not to release documents relating to his counseling of the child to the Juvenile Court. Specifically, Judge Kennedy says: “He asks me about whether the release to this Court extends to Juvenile Court and I said, absolutely not. In fact, Mrs. Stephenson (the child's attorney) didn't want him to talk to her if I was going to extend my release to the Juvenile Court.”

Document: Doerman Doc #8-A:

Letter to Ms. Doerman from Court Administrator Linda Lovelace refusing to allow her to make a transcript of two conversations contained on court records. Document also contains a copy of the motion filed by County Prosecutor Robin Piper and a memorandum of argument asking that Ms. Doerman's requests to have access to the court records be denied.

### *Hollow procedures:*

#### **❖ Examples of Procedures Inconsistent With the Court Rules or Orders, or Contrary to Law**

**Case: David A. Doerman (Plaintiff) vs. Cathy Doerman (Defendant)**  
**Domestic Relations Court Case Number: DR98-11-1798 (CA00-05-0092)**

**Court: Domestic Relations**

**Judge: Judge Sharon Kennedy**  
**Judge Stephen Yarbrough**

#### **Issue or Action:**

**When Judge Sharon Kennedy appeared before the County Commissioners' meeting to discuss the issues and complaints raised by Ms. Doerman and others, she mistakenly said that the court order setting forth the terms and conditions under which Ms. Doerman can visit her son was modified by Judge Yarbrough. It was not**

**modified; the order still requires Ms. Doerman to coordinate her visitation through Dr. Fisher.**

**Even today, the controlling court order governing Ms. Doerman's visitation rights with her son stipulates that the only way that Ms. Doerman can see her son is if Dr. Fisher approves it.** Considering that she was one of the people who filed formal complaints with the State Licensing Board against Dr. Fisher that led to him to surrender his license to practice, he might resist that approval, even if he were able to practice.

Did the court order regarding Ms. Doerman's ability to have visitation with her son require that she coordinate with and through Dr. Fisher? Yes.

Was the order requiring Ms. Doerman to get permission to see her child from Dr. Fisher as part of the visitation requirements modified or changed once the court learned that Dr. Fisher's ability to be involved in matters relating to custody and domestic relations was limited by the state licensing board? No.

Did Dr. Fisher advise the court that his ability to practice on matters relating to domestic relations issues had been constrained? No.

On Feb. 1, 2001, Judge Kennedy ordered: "Ms. Doerman shall only have contact with (her son) when the family is engaged in counseling with Dr. Fisher." The judge further ordered: "The parties and children shall continue counseling with Dr. Fisher. Dr. Fisher shall determine the frequency, length and duration of the counseling ... Ms. Doerman shall facilitate all counseling with Dr. Fisher for herself and the parties' minor child (the daughter) ... Ms. Doerman is prohibited from instituting any new counseling, mediation, or other services surrounding the issue of visitation for the children."

On June 29, 2001, Dr. Fisher entered into a consent agreement with the State Board of Psychology in which he agreed to: "... discontinue offering or rendering, and he shall disclaim sufficient expertise to offer or render, services to families, parents and/or children as an expert or evaluator for matters in Domestic Relations Court regarding parenting, custody, or visitation."

On Sept. 4, 2001, Judge Yarbrough issued an order regarding the Judgment Entry and Decree of Divorce in which he set forth the terms and conditions of Ms. Doerman's visitation rights with her children. Notwithstanding the restrictions placed on Dr. Fisher in June 2001, **Judge Yarbrough ordered: "... Ms. Doerman shall only have contact with (her son) when the family is engaged in counseling with Dr. Fisher ... the parties and children shall continue to have counseling with Dr. Fisher. Dr. Fisher shall determine the frequency, length, and duration of the counseling ... Ms. Doerman shall facilitate all counseling with Dr. Fisher for herself and the parties minor child (the daughter) ... Ms. Doerman is prohibited from instituting any new counseling, mediation, or other services surrounding the issue of visitation for the children."**

This court order gave Dr. Fisher absolute control over Ms. Doerman's ability to visit her son. It required Ms. Doerman to coordinate all counseling through Dr. Fisher. Hence, it placed Ms. Doerman in the position of having no access to her son, because Dr. Fisher is prohibited from doing any of the tasks that the court assigned to him. Dr. Fisher cannot comply with the letter of agreement he signed with the State Licensing Board if he acts to comply with the court order regarding Ms. Doerman's visitation with her son.

**It's no wonder that Dr. Fisher did not take or return any of Ms. Doerman's calls to set up visitation with her son. The agreement he reached with the State Licensing Board apparently prohibited him from doing so.** The problem is that neither Ms. Doerman nor the court knew about those restrictions at the time. It's also no surprise that Ms. Doerman grew more frustrated and angry that Dr. Fisher was not working with her to set up visitation between her and her son. She did not know that he was unable to do so.

When she learned of Dr. Fisher's problem with the State Board, she acted. On March 11, 2002, Ms. Doerman moved to have the Yarbrough order modified to enable her to visit with her son without the approval of Dr. Fisher. She alleged that she has been denied her opportunity to visit with her son because Dr. Fisher refused to return her phone calls. The previous order restricted her visits with her son to only those for which Dr. Fisher had given his approval.

On April 12, 2002, Judge Yarbrough held a hearing on Ms. Doerman's motion. The judge repeatedly told Ms. Doerman, "You do not have to see Dr. Fisher." The problem that Ms. Doerman had was that the original visitation order said that she could only see her son with Dr. Fisher's approval. Even if one takes the judge's words from the bench at face value, it is easy to see that Ms. Doerman's problem is that she was asking the court to modify the original order and set forth new terms and conditions that would enable her to see her son.

Notwithstanding that the judge told Ms. Doerman several times that she doesn't have to see Dr. Fisher, the judge then issued an order denying her motion to modify the original order. The denial means that the only order speaking to the issue of how Ms. Doerman gets to see her son is the original order requiring her to go through Dr. Fisher.

The judge's words from the bench were rendered meaningless when he denied her motion to modify the terms and conditions of her visitation with her son and failed to journalize an order removing Dr. Fisher from the case. The effect of this action was to leave the original order in place. That order is still the controlling order with respect to Ms. Doerman's visitation rights with her son. According to the order, even today Ms. Doerman can see her son only if Dr. Fisher approves.

Ms. Doerman specifically asked the judge at the April 12, 2002, hearing to issue a written order modifying the original order governing visitation and custody (Document 13; Page 31, lines 15 through 17).

If Judge Yarbrough meant what he said when he said in the course of the hearing, that Ms. Doerman does not have to see Dr. Fisher, why did he not issue a modification of the original order in writing and enter it into the record, rather than denying her motion?

**The motion that Judge Yarbrough “denied” specifically requested that Ms. Doerman be “given relief from said orders (those governing visitation and custody), and modification of Custody and Visitation of the Minor Children.”**

**Documentation:**

Document: Doerman Doc #12:

Ms. Doerman’s motion to remove Dr. Fisher from the original order and set forth new terms and conditions for her visitation with her son. Filed March 11, 2002.

Document: Doerman Doc #13:

Transcript of Proceedings, April 12, 2002, hearing before Judge Yarbrough on Ms. Doerman’s motion to modify and change the visitation and custody terms and conditions.

Document: Doerman Doc #14:

Copy of Judge Yarbrough’s order denying Ms. Doerman’s motion for “lack of evidence.”

*Ex-parte conversations, hollow procedures:*

❖ **Examples of Procedures Inconsistent With the Court Rules or Orders, or Contrary to Law**

**Case: David A. Doerman (Plaintiff) vs. Cathy Doerman (Defendant)  
Domestic Relations Court Case Number: DR98-11-1798 (CA00-05-0092)**

**Court: Domestic Relations**

**Judge: Judge Sharon Kennedy  
Judge Stephen Yarbrough**

**Issue or Action:**

Ex-parte hearings and failure to enforce court rules.

Six months after initially filing a motion for an emergency hearing to restrain her ex-husband from removing her son from his home in Summit County, Ohio, Ms. Doerman raised the issue of her request for a hearing before the court on July 17, 2001. Ms. Doerman argued that the local Court Rules, State Law and Supreme Court Rules require that she be given a hearing.

Court Rule DR 33 sets forth the procedures that one follows to schedule an emergency hearing.

Court Rule DR 35 sets forth a requirement that an “initial hearing to determine if there has been a change of circumstances as required by law shall be held no later than fourteen (14) days after service.”

Ms. Doerman argued that her son’s removal from Summit County and relocation to Butler County constituted a “change of circumstances.”

When Ms. Doerman requested an emergency hearing relating to her ex-husband’s plans to relocate her son outside Summit County, the judge said: “I can’t hear it within 14 days, I don’t have time, I can’t comply with that, if that is a rule, I can’t comply with it.”

At this point in the exchange between Ms. Doerman and the judge, an attorney for Ms. Doerman’s husband, Ms. Lynn Lampe, said on the record: “The only way you can get an emergency hearing in this court is to file a request for emergency hearing and an affidavit, then personally come and have ex-parte communication with the judge to explain why you need an emergency hearing and then the judge assigned to the case has to approve it.”

During the course of the July 17, 2001, hearing, the judge threatened Ms. Doerman with a perjury charge when she claimed that she could no longer afford an attorney.

Finally, a judge told a witness that there is a penalty for lying! The remarkable thing about this admonition from the bench is that it is the only instance I was able to find in the records I reviewed in which the court even mentioned the idea that it was important to tell the truth.

Three things are significant here: 1) The hearing came six months after Ms. Doerman originally requested an “emergency hearing”; 2) The court not only did not comply with its own rules regarding the scheduling of hearings, but the judge emphatically stated that the court will not comply with its rules; and, 3) Attorney Lynn Lampe explained on the record that the only way to get a hearing (nothing in the local rules mentions the approach that the attorney describes) is to meet privately with the judge and have an ex-parte conversation. The court said nothing to correct the attorney’s on-the-record description on how to get an emergency hearing.

**Documentation:**

Document: Doerman Doc #21:

Copy of the state law requiring that a notice of intent to relocate a child must be filed in writing with the court; copy of local DR Rule 33 and 35; and Transcript of Proceedings for hearing July 17, 2001, Pages 21, 22, and 14.

*Hollow procedures:*

❖ **Examples of Procedures Inconsistent With the Court Rules or Orders, or Contrary to Law**

**Case:** Rhonda Willis n/k/a Rhonda Stegner (Plaintiff) vs. Chris Willis  
Domestic Relations Court Case Number: DR97-06-0868

**Court:** Domestic Relations

**Judge:** Judge Leslie Spillane

**Issue or Action:**

**In January 2003 Judge Leslie Spillane wrote in a published newspaper column: “In contested custody cases, the parties always have the option to hire their own psychological experts to present testimony at trial ... Experts are always chosen and paid for by the litigants, not the court. We live in a free society. People can choose whomever they please to be an expert witness. The court can only exclude an expert if it finds the person lacking in formal education, license, or experience.”**

**Perhaps Judge Spillane can explain why, contrary to what she wrote in this column, she ordered Chris Willis to use one counselor exclusively. Judge Spillane ordered that, as a condition of continuing his visitation with his children, Mr. Willis must participate in family counseling through Dr. Walters and accept the name of a counselor selected by Dr. Walters.**

Mr. Willis asked the court to allow him to use a Christian family counselor. The counselor he selected has excellent professional credentials. His professional standing is above reproach. Mr. Willis files a motion with the court seeking permission to select a counselor of his choice, and Judge Spillane denied his motion.

Hence, while an individual may theoretically indeed be able to go to a psychologist or counselor of his or her choice, when the court makes going to a counselor of the court's choosing a condition for getting access to the person's children, then the “choice” is rendered hollow and meaningless.

The magistrate and Judge Spillane's actions are in direct contradiction to what she wrote regarding the right of an individual to select a counselor or expert witness in a column published Jan. 13, 2003, in the Hamilton Journal-News.

**Documentation:**

Document: Willis #1

Mr. Willis files a motion seeking permission to see a family counselor of his choice, Paul D. Entner, PhD.

Document: Willis #2

Chris Willis is ordered by the court (magistrate) to “contact Dr. Walters for the name of a family counselor ... As in my prior order, if Mr. Willis fails to make this contact and accept the name of a recommended person and to schedule and attend an appointment within 14 days of receiving the name of this person from Dr. Walters, then I recommend that his visitation be suspended.”

Document: Willis #3

Chris Willis appeals order of magistrate to Judge Spillane, and Judge Spillane affirms the magistrate’s order to require counseling through a counselor selected by Dr. Walters. Judge Spillane denies motion.

Document: Willis #4

Article written by Judge Spillane declaring that litigants appearing before her court may choose their own psychologist, and that the court does not select or pay for psychologists: “People can choose whomever they please to be an expert witness.”

Document: Willis #5

Resume of Dr. Paul Entner, PhD, counselor selected by Mr. Willis.

*Hollow procedures, hollow orders:*

- ❖ Examples of Procedures Inconsistent With the Court Rules or Orders, or Contrary to Law

**Case: Valerie Poptic (Plaintiff) vs. John Poptic (Defendant)**  
**Case Number: DR00-04-0479**

**Court: Domestic Relations Court**

**Judge: Judge Leslie Spillane**

**Issue or Action:**

After Valerie Poptic was caught giving false testimony about how much money she took from different accounts, the judge ordered her to produce all her financial documents and records of her bank transactions within seven days. These documents are important because they are necessary to determine accurately whether the asset split was done in accordance with the desires of the court.

**Mrs. Poptic never provided the documents. The court order was never enforced. Mr. Poptic never did get a full accounting of his wife’s withdrawals from their investment accounts.**

**Documentation:**

Document: Poptic 4

Copy of order signed by Judge Spillane ordering “Mrs. Poptic shall provide 1995 bank records within 7 days.”

## **Continuances and Failure to Enforce Court Orders**

If justice delayed is justice denied, there is a lot of denied justice in Butler County Juvenile Court and Domestic Relations Court. The routine granting of continuances by Juvenile Court and Domestic Relations Court magistrates and judges imposes thousands of dollars in unnecessary costs on parties and costs taxpayers thousands of dollars.

Judges and court officials will undoubtedly blame delays on the caseloads. I believe the delays are more related to the administrative inefficiencies in court practices. Continuances are an index of that inefficiency. To be sure, there are times when they are justified. Each time one is granted, however, the docket time is lost and costs are incurred.

The judges know when lawyers are gaming the system. There are other procedural changes available that would enable the court to operate more efficiently, such as having the Compliance Unit monitor with the Sheriff's Office whether service has been affected on the parties in advance of the hearing.

Some time ago, at my instigation the County Commissioners asked the Child Support Enforcement Agency to track continuances and dispositions of motions for contempt based on failure to pay court-ordered child support in Juvenile and Domestic Relations Court. That report is attached to this report. It documents, by magistrate and judge, the number of continuances granted in child support matters and also tracks how each magistrate and judge disposed of contempt motions for failure to pay court-ordered child support.

**The report shows that few who fail to pay child support actually are found in contempt or spend time in jail. It shows that continuances are granted routinely. The failure of the court to enforce its own orders breeds public contempt and disrespect for the courts.**

### **Recommendations:**

- The Juvenile and Domestic Relations courts should log and track all requests for continuances and the dispositions of all motions for contempt. These records should be open to the public. Any motion for continuance or contempt should be tracked by magistrate, judge and attorney requesting it, along with the court's ruling.
- The courts should log continuances by reason. A log of motions to continue and motions for contempt would create a valuable tool that the public can use to assess the effectiveness and quality of the administration of justice. By cataloguing continuances by reason, the courts would provide a tool for valuable insight into how we can make the process effective.

- Children Services employees waste thousands of hours of staff time each year sitting in the lobby of the Juvenile Court awaiting hearings that never happen. When a staff person is subpoenaed to court, the process usually has him or her report at around 8:30 a.m. and wait until the case is called. It is not unusual for the staff witness to wait all morning, only to find that the case has been continued. Even when the case is not postponed, the agency loses precious staff time. There are many ways the court could work with the Children Services Board to conserve staff time. In an agency where caseworkers are already overwhelmed by the workload, the time lost waiting to testify can significantly reduce productivity.
- Using the model of a probation officer, the Juvenile Court should appoint a Compliance Officer and give that officer the authority to initiate action with the court for noncompliance with court orders. This process would save docket time and money for all involved. When someone wants to enforce a court order now, the person must file a separate action in contempt, get service good, schedule the hearing and hold the hearing. This process generally takes months and costs everyone involved lots of money (i.e. hiring an attorney, staff time, time off work, etc.). The process can be streamlined by having a court compliance officer with the authority to bring the matter directly to the judge for action. The initial court order can be framed so as to incorporate the function of the compliance officer into the process.
- The Domestic Relations Court should use the same model, giving the authority to the existing Compliance Unit. The Domestic Relations compliance unit now simply “grades” papers submitted by lawyers. It focuses exclusively on “paper compliance,” rather than substantive compliance with court orders. Its role could easily accommodate such a program. This model would significantly simplify the process, reduce the cost and reduce the docket time associated with securing compliance with court orders.
- The Juvenile Court and Domestic Relations Court should work with the Sheriff to implement a sentencing program that allows those held in contempt to serve jail time on work release. One acceptable reason why one hesitates to impose jail time for nonpayment of child support is that the offender’s loss of a job serves no one’s interest. By allowing the offender to continue work and still serve time in jail during off hours, the court would have another tool to inspire compliance with court orders.
- The Juvenile Court and Domestic Relations Court should use community service in lieu of jail time as a penalty for contempt. Lots of community projects could benefit from such a strategy. Ordering supervised work crews instead of jail time is another way of exacting punishment for failing to comply with a court order without disrupting a person’s employment. The cost of such a program could be defrayed by adding a small fee to the court costs in divorce and juvenile actions.

## **Court Shopping: Using the Juvenile Court to Appeal Unfavorable Outcomes in Domestic Relations Court**

### **Findings:**

Nationally, somewhere between 35 percent and 50 percent of all child abuse, neglect and dependency cases that are docketed for a hearing in Juvenile Court are initially heard in Domestic Relations Court. Under Ohio law the formal appeal process is rather straightforward: If a party to a case in a domestic action is unhappy with the outcome, then that party has a right to appeal the matter to the district appellate court for review.

The problem with this theory is that the appellate court is limited in the scope of its review. When a matter goes before an appellate court arising from either Domestic Relations Court or Juvenile Court, the law says that reviewing judges must defer to the trial court as to findings of fact and assignments of remedies. In plain English, the trial court has to really screw up to be overturned on appeal — legally speaking it's called abuse of discretion. Furthermore, on appeal one does not get a new hearing on the facts, only a review of the process for errors that have occurred that had a prejudicial or outcome determinative impact on the proceedings. One is not entitled to a perfect proceeding, but is entitled to a fair one.

When one gets an unfavorable decision from the Domestic Relations Court, however, there is another option — file a child abuse complaint and have the Juvenile Court docket the case. A party to a dispute in Domestic Relations Court can get a second bite of the apple in Juvenile Court by filing a complaint for child abuse or neglect. If the Children Services Board finds reasonable suspicion that the abuse may have occurred, then that agency files a complaint in Juvenile Court, and the whole process may start over again from the beginning — a brand new trial.

According to the director of Butler County Children Services, as many as 30 percent to 40 percent of the cases handled by that agency were first litigated in Domestic Relations Court or were custody, child support or visitation disputes in Juvenile Court. These complaints — some legitimate — consume an enormous amount of staff time and financial resources. National studies have found that a large number of false complaints filed for child abuse or neglect arise out of Domestic Relations Court disputes.

Oftentimes the complaint has nothing to do with whether the child has been abused or neglected. It's simply a matter that one of the parties is unhappy with the results of a custody battle or visitation schedule and wants a more favorable outcome the second time around.

There is little coordination or collaboration between the Butler County Juvenile Court and the Domestic Relations Court on these cases, nor is their much coordination or collaboration between the Children Services Board and the Domestic Relations Court in the conduct of the investigation that the children's services agency conducts. One would

think that the first question an investigator for the child protection agency would have is: Has this allegation been heard or decided in Domestic Relations or any other court?

One would think that, if the matter has been before Domestic Relations or another court, there should be a treasure trove of information in the record, information that can be used to determine the validity of the claim. Unfortunately, investigative practices of the children's services agency do not require CSB investigators to check with the Domestic Relations Court and review the record if there is one. Therefore, they seldom do it.

Neither does the Juvenile Court. Again, one would think that the court would want to know if the parties to a child-abuse dispute have previously litigated the same question in the Domestic Relations Court. If so, the decision and record of the Domestic Relations Court could be instructive.

This is not to suggest that, just because a matter was previously raised in the Domestic Relations Court, it should not be investigated and treated as seriously as any other child-abuse complaint. To be sure, the couple may have gotten divorced *because* one of the spouses abused a child. It is to suggest that the investigative and trial process in the Juvenile Court should review the proceedings of the Domestic Relations Court to determine what information, if any, may already be in the record regarding the matter being brought to the Juvenile Court.

Going through the same protracted hearing process again is costly to the parties involved, costly to the taxpayers and, most significant, emotionally costly, damaging and mentally exhausting to the children. It does not serve the interest of children to have them tormented by the system because of a false complaint — one primarily driven by the hatred two former spouses or lovers may hold for each other, rather than a risk of harm to the children involved.

Having so much of the court and agency time consumed by false complaints also puts children who really are in dangerous situations at risk, because it siphons off resources that could otherwise be directed towards giving them the protection they need. The systemic gaming of the Domestic Relations Court and Juvenile Court hurts kids and families. The courts have every interest in developing procedures to minimize the practice of court shopping as a means of circumventing the prescribed appeal process.

The forum where family custody, child support, and visitation Issues are dealt with is also changing. Since 1994, the budget for the Domestic Relations Courts has more than doubled, rising to 211 percent, from \$824,804 in 1994 to \$1,741,720 in 2002. During the same period, new cases filed each year declined to 66 percent, from 2,311 in 1994 to 1,529 in 2002. The budget per new case more than tripled, rising from an average of \$356 per new case to \$1,139.

During the same period, the filings in Juvenile Court involving custody and visitation issues have gone up dramatically. As more children are born out of wedlock, issues of custody, visitation and child support are handled in Juvenile Court, rather than Domestic

Relations Court. Judge Spillane knows this and knows that we are looking at ways to consolidate the two court functions to save money.

### **Recommendations:**

- The Butler County Juvenile Court should adopt rules requiring that anyone who is a party to a child abuse, neglect, custody or dependency action in the Juvenile Court should disclose to the court whether the parties to the action before the Juvenile Court have ever been involved in a proceeding in any other court. The rule should also require them to disclose whether any of the issues being brought before the Juvenile Court have been raised in any previous court proceeding.
- The Butler County Juvenile Court should adopt rules requiring that, if the matter has previously been before another court, the record of that proceeding relating to the issues before the Juvenile Court should be filed as part of the record in the instant action so as to become part of the record.
- The Domestic Relations and Juvenile Court should be combined to form a Family Court. The Butler County Commissioners should form a workgroup to explore the option of creating a Butler County Family Court, combining the Domestic Relations Court and the Juvenile Court into one court. Case data show that the case filings in the Butler County Domestic Relations Court are declining and the case filings in the Butler County Juvenile Court are rising. When these data are reviewed in light of the high level of filings in Juvenile Court that have previously been in the Domestic Relations Court, the creation of a Family Court may enable us to deal with family issues more effectively. Our courts are reflecting the realities of our communities; unfortunately more children are being born out of wedlock. Hence, custody cases in Juvenile Court are rapidly rising. The County Board of Commissioners should provide the leadership to review whether this might be the right time to combine the operations of the two courts. Such a review can determine whether such an option would increase the level of coordination and provide better service to the public while consolidating the administrative functions of the two courts. It should also review the question of whether we could eliminate one judgeship in the process of forming a Family Court.

### **Conclusion**

The foregoing is only a tiny slice of the inner workings of the Butler County Juvenile Court and Domestic Relations Court. Numerous other persons contacted me with similar complaints. I was constrained by time and staff resources.

I used examples that could be clearly documented and independently verified by court records. None of the examples of falsification used in this report were based on the proof of falsity resting solely upon the contradiction by testimony of just one person other than the one raising the issue. Each example was one that could be proven by an independent review of the record and objective documentation proving it to be false or misleading.

This requirement limited the scope of the report, because getting access to court documents that might prove or disprove an assertion is difficult, expensive and sometimes just plain impossible. Unfortunately, the barriers to access to information are real.

I want to make it clear that I recognize the difference between a statement that is perjury and one that is false or misleading. Ohio Revised Code, Section 2921.11, sets forth the elements of a perjury offense. The issue goes beyond the narrow question of whether a false statement rises to the status of a criminal offense, although in some of the examples I would argue that the action warrants a review by the prosecutor to determine whether it meets the standards for perjury. Most average and normal citizens would consider some of the examples cited in this report as perjury.

The broader question is far more significant: Is the false statement intended to mislead the court on something that will influence the court's decision? The court has every right to protect the integrity of its procedures. It has numerous tools to achieve this goal. Representations that it must sit by passively as lawyers, litigants or witnesses attempt to deceive and mislead the court are pure nonsense.

The court is not some helpless victim, powerless to protect itself from deception. It has a duty to take active measures to encourage those who approach it to give truthful and accurate statements. Its failure to do so is a shameful assault on the rights of those affected by its decisions.

This report is intended to advance the cause of justice, fairness and due process in Butler County Juvenile Court and Domestic Relations Court by prompting changes in how the Courts conduct the public's business. I hope that those changes will occur soon.