



March 30, 2012

The Honorable James T. Swenson  
Chief Judge of the Fourth Judicial District  
300 S. 6<sup>th</sup> Street  
Minneapolis, MN 55487

Re: Misdemeanor criminal case #1 27-CR-11-32635 & #2 33938 (Judge Bartolomei)  
CHIPS case 27-JV-12-415 (Judge Fred Karasov)

Dear Chief Judge Swenson:

I am writing to determine the process in the Fourth Judicial District for a “coordinated” decision-making process pursuant to Minn.R.Juv.P. 1.02(h). Of course, I am copying both Judges Bartolomei and Karasov (and all parties).

As you are aware, the 1999 Advisory Committee Comment says of that Rule,

Rule 1.02(h) calls for coordinated decision-making in those cases where one family is involved in simultaneous juvenile, criminal, and family court matters. The parties and the court should coordinate the separate proceedings to assure a consistent outcome that is in the best interests of the child.

Often my clients suffer, because those who are at the various courthouses full time know unwritten rules that private people and private attorneys do not know. Or, perhaps there is some more formal policy of which I am (also) not aware. (Fourth Judicial District Bench Policy G.04 deals with the overlap between Family (OFP) and criminal, only.

A bit of background is appropriate to support Eric Yzaguirre’s position that time for a “coordinated” decision-making process is of the essence.

Eric Yzaguirre and Breann Morris (not married) were involved in an incident 10/18/11. What occurred is disputed. Minneapolis charge Yzaguirre (and not Morris) with domestic assault. Two no contact orders were issued on that case, and both are subject to a pending motion by Yzaguirre that they are void *ab initio*. Jill Clark was retained to defend Yzaguirre.

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Child Protection began to “investigate” that incident, and it is clear that information and documents flowed between the City Attorney’s Office and Child Protection. Yzaguirre had already been criminally charged over the incident, so he raised Fifth Amendment issues. When the County did not respond appropriately, Yzaguirre sued Hennepin County and several of its officials in state court. The Hennepin County Attorney’s Office removed the case to Federal Court, where it is now pending.

On November 1, 2011, Eric Yzaguirre appeared for Court on Criminal Case #1, and he was arrested in the courtroom for Case #2, an allegation that he violated a no contact order. That is pending, and tagging behind case #1. Judge Bartolomei has both of those cases, and Case #1 is set for hearing 4/12, and trial 4/23.

Shortly after Breann Morris requested that the no contact order be *dropped*, the Hennepin County Attorney’s Office commenced a CHIPS case against her. The relief requested is that she be compelled to attend DAP. This does not appear to be relief that is urgent.

The CHIPS case threatens Eric Yzaguirre’s Fifth Amendment right. Misusing county systems to infringe Fifth Amendment rights is a claim that Eric Yzaguirre already has pending in his federal civil case.

Yzaguirre is the father of both children, and he signed ROPs for both children. At the first CHIPS hearing, Judge Fred Karasov ruled that there would be an evidentiary hearing challenging the Petition on April 20. After that hearing, Judge Karasov reversed himself (although he allowed argument from parties afterwards). Yzaguirre responded on the merits, and also did what he believed was necessary to intervene in that case. At this time, it appears that case is moving forward in a manner that would prevent Yzaguirre (or his counsel) from safeguarding the rights of him or his children.

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Perhaps others will not agree with my characterizations, but since I represent Yzaguirre in all of these cases, I feel I have an overview of the cases and their current procedural status.

I am leaving all legal issues to the Judges in those cases. I am not asking for any ruling of any kind from the Chief Judge.

**JILL CLARK, LLC ATTORNEY AT LAW**



## REQUEST FOR COORDINATED PROCESS

We believe this is precisely the type of situation the Rule contemplated for a coordinated decision-making process. It is the confluence of the criminal cases plus the CHIPS case both pending before the Fourth Judicial District Bench that is the current issue with regard to Yzaguirre's Fifth Amendment rights. (He cannot defend himself or seek the appropriate protection of his children from government in the CHIPS case, because to do so would mean he has to testify, which forces him to waive his Fifth Amendment right. This is precisely the type of issue that led to the civil case. Yzaguirre can pursue this issue in that venue if absolutely necessary, but believes that the state court bench will have an appropriate approach.)

If I make a motion in either case, it seems the argument would be that I have not served someone, or that I am not before the correct decision-maker. It also appears that at this time my client is prevented from intervening in the CHIPS case (even though he is the father of two children), so I would imagine if I try to make a motion there, someone would say I cannot.

Sincerely,

s/jillclark

Jill Clark

JEC/slf

C: Judge Bartolomei; Judge Fred Karasov; Mike Freeman; Breann Morris (represented by Attorney McCreary in the CHIPS case but not the criminal case); Atty. McCreasy; Asst. HCAO Atty. Hatcher; GAL Leaf; Juvenile staff Willms; Asst. MCAO Rygh; Asst. MCAO Kelly; Client, original to both Juvenile Filing and Criminal Filing.

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