

No. 26-5351

IN THE

Supreme Court of the United States

JEFFREY FRANCIS BARRY,
Petitioner,

v.

AMY KATHLEEN SCHWENDER
Respondent,

On Petition for Writ of Certiorari to the Supreme Court of Maryland

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION

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LATE

JEFFREY FRANCIS BARRY

*

IN THE

APPELLANT,

*

APPELLATE COURT

v.

*

OF

AMY KATHLEEN SCHWENDER

*

MARYLAND

APPELLEE.

*

Case No.: ACM-REG-2522-2024

*

Circuit Court No.: C-03-FM-20-003949

*

Notice of Appeal Filed: 2/28/2025

* * * * *

Barry v. Schwender – Petition for Writ of Certiorari

To the Maryland Supreme Court Filed by Jeffrey Francis Barry, Pro Se Appellant

I. Statement of Jurisdiction

This petition is filed under Maryland Rule 8-204 (a) within fifteen days of the Appellate Court's mandate (issued September 2, 2025). This Court has jurisdiction under the Maryland Constitution, Article IV, § 3A, and Md. Rule 8-204.

II. Statement of the Case

A. Trial Court Proceedings (2021–2025)

- Appellant, pro se, challenged custody, venue, and procedural irregularities in Case No. C-03-FM-20-003949.
- He moved to transfer venue under Md. Rule 3-326(a) 3/4/24 based on Kathy Schwender's fifteen-year role as head administrative assistant to Judges Cox, Cavanaugh, Turnbull, and Jakubowski, and her delivery of personal retirement cakes and informal social ties across chambers (Exhibits 6–10).
- That Motion under MD Court rules would have been heard by Judge Robinson, Keith Truffer wrongfully intercepted Appellants Motion and in 6/15/21 hearing suppressed evidence of improper venue and proceedings while stating the Appellant's perception of bias was "reasonably" minded.
- Evidence was gathered from discarded non-smart phone technology, brought to the Father by Owen Barry (son). Kathy's relationship to Magistrate / Administrative Judges expanded further than presented by trial or appellant court on reasonable consideration of the facts and evidence, exemplified by the personalized tokens, such as the Clover's for Cavanaugh's cake, or Farm aesthetics for Turnbull's cake, indicating personal judicial relationships blended with professional.

- Appellant as evidenced Judge Cavanaugh 'Specially Assigned' Keith Truffer, Appellant Court omits the perception of impropriety stems from the fact that no matter the Judge Appointed during the pre-trial phase, the appointment would have been made directly by my Ex Mother In Law's Direct Report, the Head Administrative Judge.
- The Circuit Court denied venue transfer without appropriate analysis of Head Judge Robinson per, Keith Truffer intercepted appellants request,
- Pro se party sought intervention before trial judge was 'specially appointed' by Judge Cavanaugh

B. Appellate Proceedings

- Appellant filed his opening brief (May 12, 2025), rebuttal to appellee's informational brief (June 28, 2025), and a motion to correct the record that was not fully honored in its intent.
- The Appellate Court issued a mandate on September 2, 2025, affirming on all issues and imposing costs. It did not address the venue motion or administrative staff conflict issues.

III. Reasons for Granting the Petition (Md. Rule 8-204(c))

1. **Underserved Appellate Oversight** The Appellate Court overlooked central venue and bias claims supported by undisputed facts and record exhibits.
2. **Importance to Judicial Integrity** The case exposes a systemic loophole: Maryland's recusal rules shield administrative staff who assign judges and manage case flow, from any conflict-of-interest obligations, undermining public confidence and due process.
3. **Novel Statewide Question** Whether mandatory recusal must extend to local circuit court administrative employees raises a novel question of state law that impacts every Maryland trial.

IV. Argument

A. Maryland's Recusal Rules and State Ethics Framework Exempt Key Decision Makers

Under **Md. Rule 18-102.11(a)**, a judge must recuse when "impartiality might reasonably be questioned." Yet this duty applies only to judges. Law clerks, who serve one-year terms, are also implicitly covered by ethics opinions, but **local circuit court administrative staff** are entirely exempt.

1. State Ethics Law (Gen. Prov. §§ 5-501 et seq.) & COMAR

- COMAR 19A.02.01-.02 defines "employee" subject to conflict of interest rules but explicitly exempts "judges and employees of the Register of Wills or Orphans' Court" and, by local funding structure, circuit-court staff.
- Gen. Prov. § 5-505 provides narrow exceptions but does not mandate recusal or disclosure for local judiciary employees.

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2. Judiciary Employee Handbook, § 3.5 “Standards of Conduct”

- Applies only to employees “paid through the Central Payroll Bureau,” excluding “locally funded employees in the circuit courts” (the exact position held by Kathy Schwender).
- Defines “Administrative Head” for circuit-court employees but imposes no recusal or disclosure obligations when those employees have personal ties to litigants or presiding judges [Handbook § 3.5] .

These gaps mean the head administrative assistant who assigns cases, schedules hearings, and liaises with judges remains unconstrained by any mandatory ethics rule, even when her daughter litigates before those judges.

B. Due Process and Neutral-Tribunal Violations

The Fourteenth Amendment guarantees “the right to an impartial judge.” Procedures that allow administrative staff with direct, long-term ties to litigants and judges to control venue and assignments violate due process.

- **Md. Rule 3-326(a)** permits venue transfer when “prejudice may result.”
- Assigning Appellant’s case to Kathy’s supervisor, Judge Cox, then by Judge Cavanaugh to Judge Truffer by another of Kathy’s same chambers Judges she directly worked for, without recusal, denied Appellant a neutral forum.
- In Politics the logic of loyalty often follows “I don’t care who does the voting, as long as I do the nominating” in mindset, this applies where if bias special assignment of a Judge provides the same advantage.

C. Former Clerk Conflict Amplifies the Problem

Appellee’s first counsel, Nicole Rush, clerked for Judge Cox alongside Kathy Schwender (2015–2016). Under **ABA Model Code Rule 2.11**, former clerks must not practice before their former judges for one year. Maryland has no equivalent. This unaddressed conflict further taints the proceedings.

D. Additional Preserved Errors

- **Exclusion of Child’s Testimony:** Trial court quashed subpoena without individual findings under *Kadish v. Kadish*.
- **Misapplication of “Material Change” Standard:** Ignored documented changes in living arrangements and fraudulent school enrollment.
- **Service Irregularities:** Gallagher’s back-dated certificate of service (December 8, 2024) versus MDEC logs (December 4, 2024) evidences procedural favoritism.
- **Record Integrity Failures:** COVID-era audio gaps and misfilings warrant remand under *Smith v. State*, 291 Md. 125 (1981).

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V. Relief Requested

Appellant respectfully requests that this Court:

1. Grant this petition for writ of certiorari.
2. Reverse the Appellate Court's mandate of September 2, 2025.
3. Vacate the Circuit Court's custody and venue orders and remand for a new hearing before a neutral tribunal.
4. Order the Maryland Judicial Conference and the Legislature to amend:
 - Md. Rule 18-102.11 to include administrative staff and former clerks in recusal obligations;
 - Gen. Prov. § 5-505 and COMAR 19A.02.01–.02 to eliminate circuit-court staff exemptions.

VI. Appendix of Authorities

Statutes & Rules

- Md. Rule 3-326(a) (venue transfer)
- Md. Rule 18-102.11(a) (judicial recusal)
- Md. Code, Gen. Prov. §§ 5-501, et seq. (State Ethics Law)
- Md. Rule 3-224 (certiorari petitions)

Regulations

- COMAR 19A.02.01–.02 (conflicts of interest)

Internal Policies

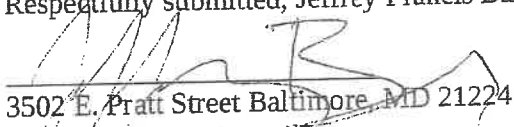
- MD Judiciary Employee Handbook § 3.5 “Standards of Conduct”

Key Decisions

- Kadish v. Kadish, 2022 Md. App.
- McDermott v. Dougherty, 385 Md. 320 (2005)
- McMahon v. Piazze, 2020 Md. App.
- Smith v. State, 291 Md. 125 (1981)
- Jefferson-El v. State, 330 Md. 648 (1993)

RESPONDENT'S APPENDIX A

Respectfully submitted, Jeffrey Francis Barry, *Pro Se*


3502 E. Pratt Street Baltimore, MD 21224

Email: jfbarry87@gmail.com

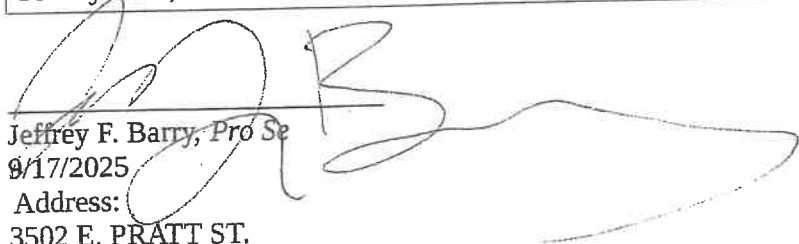
Phone: +1 (667) 212-8422

Date: September 17, 2025

Certificate of Service,

I HEREBY CERTIFY that on this 17th day of September 2025, a copy of the foregoing document was served via being mailed first class, postage pre-paid upon:

Amy Schwender 29 Spring Glen Court Cockeysville, MD 21030	Hunter Gallagher 999 Corporate Blvd., Suite 100 Linthicum Heights, MD 21090
---	---


Jeffrey F. Barry, *Pro Se*

9/17/2025

Address:

3502 E. PRATT ST.

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JEFFREY FRANCIS BARRY	*	IN THE
PETITIONER,	*	SUPREME COURT
v.	*	OF
AMY KATHLEEN SCHWENDER	*	MARYLAND
RESPONDENT.	*	Supreme Court Case No.: SCM-PET-0296-2025
	*	Appellate Court Case No.: ACM-REG-2522-2024
	*	Circuit Court No.: C-03-FM-20-003949
	*	Notice of Appeal Filed: 2/28/2025

* * * * *

Motion for Reconsideration

COMES NOW Petitioner, Jeffrey Francis Barry, pro se, and respectfully moves for leave to file his Petition for Writ of Certiorari nunc pro tunc and based here now on a filed Brief to reconsider the order for dismissal. For good cause shown and in support states the following:

I. Relief Requested

Petitioner requests that the Court:

1. Grant leave to accept the Petition for Writ of Certiorari as filed nunc pro tunc to September 17, 2025; where-by service was performed by September 17th in effect, with electronic filing occurring with a Date/TIME Submitted of: 9/18/2025 12:15 AM EST and a Date/TIME Accepted of 9/18/2025 10:46 AM EST for the electronic filing and to proceed with Petitioner's brief as filed today [Exhibit 4 - Certiorari Brief - Barry]
2. Reconsider the Court's dismissal of Petition for Writ of Certiorari; and
3. Alternatively, permit Petitioner to supplement the record with evidentiary proof of timely service and transmission.

II. Preliminary Statement

I am a Pro Se father, I have NO Legal Custody of my Son, this Warrants Change assessment based on my request solely to regain custody rights and this process in and of itself has diminished my Pursuit of Happiness and Liberty to otherwise enjoy my still limited time with my Son and Family, while presenting unconstitutional hurdles to simple request to do the right corrective action in my Sons case, where he is neglected by his Mother, who works full overnight shifts, and his Grandmother, a conflicted career-long Administrative Assistant to judges involved in Trial Court proceedings.

Petitioner served and transmitted the Petition for Writ of Certiorari in effect September 17, 2025 mailing with postage pre-paid first class and with an e-filing at 12:15am ET 9/18/25 having no tangible impact to the next day processing of the Clerk that occurred on September 18th, 2025.

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RESPONDENT'S APPENDIX B

Petitioner is proceeding pro se, acted in good faith, and promptly served Respondent, and attempted to file within the Rule 8-302(a) deadline. Dismissal on this narrow administrative timing ground would defeat substantial justice, the Court should exercise its discretion to accept the filing nunc pro tunc.

III. Statement of Facts

1. The Appellate Court of Maryland issued its mandate on September 2, 2025. Fifteen days later there-of the deadline under Md. Rule 8-302(a) was September 17, 2025.
2. Petitioner served the Petition for Writ of Certiorari on September 17, 2025, via first class mail with filing to MDEC occurring Date/TIME Submitted of: 9/18/2025 12:15 AM EST (Exhibit 1: filed-petition-ex1).
3. The Supreme Court clerk's internal system shows an administrative processing and acceptance stamp after midnight on September 18, 2025 (Exhibit 2: filing-reviewed-ex2).
4. Petitioner is representing himself pro se, acted promptly and in good faith, and relied on established filing practices. No intentional delay occurred and Respondent will not be prejudiced by acceptance of the filing nunc pro tunc.
5. Today 11/26/25 Court Dismissed Case,
6. Today 11/26/25 Petitioner has filed this motion with coinciding Certiorari Brief.

IV. Legal Argument

A. Md. Rule 8-302(a) and Timing Principles Md. Rule 8-302(a) sets the outer filing window, it does not mandate dismissal in cases of ministerial clerk delays when the filing left petitioner's control on the deadline date. Courts consider the practical realities of electronic transmission, pro se status, and equitable toleration of minor timing discrepancies.

B. Equitable Discretion and Pro Se Considerations This Court has discretion to accept filings nunc pro tunc for excusable neglect, clerical or ministerial delay, or where equitable considerations warrant. Pro se litigants are entitled to liberal construction of procedural rules and the benefit of the doubt where the record shows timely effort to comply.

C. No Prejudice to Respondent; Substantial Public Interest Respondent suffers no prejudice from acceptance; discovery, briefing schedules, and other case management measures can be imposed to protect Respondent if necessary. The Petition raises important questions about judicial ethics, recusal, venue, and due process that implicate significant public interests. Denial on a narrow administrative timing technicality would frustrate substantial justice.

D. Proper Remedy is Nunc Pro Tunc Acceptance or Leave to Amend. The narrow and appropriate remedy is to accept the Petition as filed on September 17, 2025, or grant leave to supplement with evidence proving transmission/service on that date.

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V. Evidence Submitted

Petitioner attaches and relies on the following exhibits:

- Previously Exhibit 1 - Email receipt of MDEC Petitioner's Submission,
- Previously filed Exhibit 2 - Email receipt of MDEC Clerk Acceptance,
- New Exhibit 4 - Certiorari Brief - Barry

Petitioner will produce originals or certified copies upon the Court's request.

VI. Conclusion and Prayer for Relief

For the foregoing reasons, Petitioner respectfully requests that the Court:

1. Grant leave to accept the Petition for Writ of Certiorari nunc pro tunc to September 17, 2025; and Petitioners Brief as filed here today 11/26/25 [Exhibit 4 – Certiorari Brief - Barry] .
2. Reconsider Order to Dismiss; and
3. Grant any further relief that the Court deems necessary to permit consideration of the Petition on the merits.

Respectfully submitted, Jeffrey Francis Barry, Pro Se
3502 E. Pratt Street
Baltimore, MD 21224
Email: jfbarrv87@gmail.com // Phone: +1 (667) 212-8422

Jeffrey F. Barry, Pro Se
11/26/2025

Certificate of Service,

I HEREBY CERTIFY that on the 26th day of November 2025, a copy of the foregoing document, and the following supporting exhibits: exhibit 4, were each served via being mailed first class, postage pre-paid upon:

Amy Schwender 29 Spring Glen Court Cockeysville, MD 21030	Hunter Gallagher 999 Corporate Blvd., Suite 100 Linthicum Heights, MD 21090
---	---

Jeffrey F. Barry, Pro Se, 11/26/2025
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11-26-25
JB

JEFFREY FRANCIS BARRY	*	IN THE
PETITIONER,	*	SUPREME COURT
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AMY KATHLEEN SCHWENDER	*	MARYLAND
RESPONDENT.	*	Supreme Court Case No.: SCM-PET-0296-2025
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	*	Circuit Court No.: C-03-FM-20-003949
	*	Notice of Appeal Filed: 2/28/2025

* * * * *

Barry v. Schwender – Certiorari Brief

To the Honorable Judges of the Supreme Court of Maryland:

Petitioner, Jeffrey F. Barry, Pro Se, respectfully requests of this Maryland Supreme Court a review of the Appellate Court’s Mandate in Barry v. Schwender, No. 2522 (Md. App. Aug. 14, 2025), and, in the alternative, moves for rehearing and recall of the Appellate Court mandate. This petition seeks narrow corrective relief because the record establishes both the appearance of judicial partiality and structural prejudice in the Circuit Court for Baltimore County, and a misapplication of established standards of review by the Appellate Court that materially compromised Petitioner’s opportunity to secure a fair adjudication of custody and minor child’s best interests.

This petition rests on plain, record-based predicates and settled recusal law. The United States Supreme Court in Rippo v. Baker clarified that a litigant need not prove actual bias; under the Due Process Clause a Judge must be disqualified when the probability of actual bias on the part of the Judge is sufficiently high that the objective-observer test is triggered.

This matter extends to Transfer of Venue where a highly connected Party has created a hostile Clerk and Administrative entity, beyond the Judge presiding’s own perceived bias, and the questionable ‘Special Assignment’ process selectively procuring blind Justice.

Novel to this matter is where the perception of bias extends beyond individual Judges, and applies to venue as a whole. Failure to issue a Summons by Baltimore City Circuit Court, as an example, could not be construed as malicious in any way, where-as due to the employment entanglement of the Ex Mother In-law, Baltimore County Circuit Court in an objective-observer test would not appear to have the same neutrality where a Summons is a critical due process element here abused as a tool against Petitioner regularly.

The limited ground that both the appearance of as well as the overt effects judicial partiality and structural prejudice exists with respect to the Trial Court as a venue against Petitioner due to the tenured employment of the Respondent’s Mother, Kathy Schwender, and minor child’s best interests are

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[Signature]

RESPONDENT'S APPENDIX C

both not served nor properly nor ever assessed validly. Keith Truffer's admission to knowing Kathy Schwender, head of current household of minor child, "Very Well," and further statements that "any reasonable minded person would question if they got a "Fair-shake," on record statements alone warranted recusal beyond unfitness of venue and malicious fact finding at the Trial Court, further where now a closed three-judge panel has decided the appeal Mandate by omitting facts and 'playing dumb' in assessing legal questions on Trial Court proceedings produced by blind logic of Circuit Court No.: C-03-FM-20-003949, and ruling inconsistently with widely accepted settled standards.

Panel notably contained a member Judge Ripkin, a former Head Administrative Judge themselves, who they and their spouse have personally benefited from proceedings where Keith Truffer presided over related to the Angelos estate. The recent Angelos Estate ruling creates a reasonable perception the appellate panel could be compromised where this case implicates conflict of interest between Administrative Judicial Staff where a Trial court Judge has then provided preferred treatment to an employee's daughter, compounding the appearance of systemic impropriety against Pro Se party.

I simply looking to fully reweigh and establish the best interests of my Son, newly at a critical point in his life of turning double digits age ten (10) now approaching middle school, which on it's own standing warranted the relief requested of change in circumstance of a child's life, every year brings a growth in needs and parental duties of a child, and changing life circumstances where opportunities on their face that are a value to minor child's best interest the court has a duty to hear.

The facts are simple, but the case made very complex by the pervasive misrepresentations and fraud on the court of the Respondent, as well as the tenured relationship of Respondent's mother to the Trial Court, which could be remedied with simple remand. Parties were married in Virginia, Petitioner lives in Baltimore City and grew up in Virginia with no direct family relationship that could claim to have ever known or interacted with a Judge, let alone worked with one for 15+ years. Respondent lives and grew up in Baltimore County where her mother has worked extensively as a high level Case Manager, and high level Judicial Administrative Assistant working directly for the Circuit Court Family Law offices and Head Administrative Judges (HAJ) implicated at the Trial Court.

It does not take Sherlock Holmes or reading Tea Leaves to decipher that this creates a reasonable perception of impropriety that warrants vacatur and remand to a neutral Circuit Court venue in the State of Maryland, outside the Jurisdiction of Baltimore County.

Two (2) out of Three (3) venue choices would have been arguably neutral that were discussed for months before Respondent's filing as suitable, the Respondent was aggravated, and with malicious intent filed and proceeded through Magistrate controlled phases under admitted false statements of some Drunk Tank combined with outlandish claims I would flee with child to China with Respondent's alleged intent, and effect of knowingly tainting proceedings further in a favorably blind venue, to alienate Petitioner and his child as a carried out threat, and to manipulate the child through alienation of other parent.

Relief Requested: Grant Certiorari, reverse and remand for an Independent Judge in Baltimore City for a full evidentiary hearing; vacatur or stay of orders obtained through the procedures challenged below; and an order for limited expedited discovery and preservation of evidence.

11/26/23
JB

Questions Presented

1. Whether the Appellate Court misapplied the standard of review for 'perceived impropriety' and overlooked material facts, and violated Rippo vs. Baker standard, [Link: <https://supreme.justia.com/cases/federal/us/580/16-6316/>]
 - The Supreme Court vacated the Nevada Supreme Court's judgment, stating that due process may sometimes demand recusal even when a judge " 'ha[s] no actual bias.' Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable."
 - Whether a Venue transfer can be considered as reasonable where no party is materially otherwise impacted by vacatur to a neutral venue.
2. Whether the Appellate Court erred by adopting a factual premise that the child's maternal grandmother was a "former" courthouse employee for the applicable timeline without full weighted mention that the record shows she was a current, long-tenured Baltimore County Circuit Court administrative assistant whose duties intersected with Family Law assignment and clerk functions at the time of filing through HAJ transition to Ruth Jackubowski, and whether that misstatement affected the Appellate Court's recusal/venue analysis.
 - a) What if not the fact Kathy Schwender was at the time of divorce the is daytime, and overnight full-time caretaker of child as motive combined with her employment would prove the reasonable perception standard where in this case? If not the sheer number of exhibits including a numerous Judicial retirement cakes, a sombrero wearing fiesta judge, the personal phone numbers of Judges found in Kathy's Phone, would otherwise provide the appearance the reasonable perception standard of social involvement with the judiciary could be met? This is compounded by my Ex Wife still living with her Mother who was directly working for Judges overseeing this Family law case brought by Family Law Administrative Assistant's who worked there for over 13 years daughter.
3. Whether the Appellate Court erred by adopting a factual premise that the Petitioners Motion to Transfer Venue was related simply for convenience when it appears Keith Truffer intercepted Petitioners motions violating a long over-due process of fair assessment of venue transfer, and whether that misstatement affected the Appellate Court's recusal/venue analysis. This motion reflects a legal strategy by Petitioner to show the Trial Judge is Camouflaging the issue.
4. Whether an Appellate Court panel member should have been recused where objective facts show the panel member's household had a potential nexus to financial outcomes arising from proceedings presided over by the trial judge under review, raising a reasonable perception of more than 'de minimis' interest.
5. Whether the Trial Court abused its discretion and has violated Petitioner's right to due process by misapplying material facts, ignoring expert recommendations, failing to acknowledge documented materially changed circumstances, conducting a "one-side" fact finding, and ignoring Respondent misconduct alleged in Petitioner's modification petition and by denying a full evidentiary hearing on the child's best interests.

6. Whether the Circuit Court's repeated denial of targeted discovery, testimony of parties, refusal to order a neutral physiological evaluation of Respondent, subpoena of actual worked hours, or their home conditions constituted refusal to conduct a "two-sided" fact finding, and the failure to adjudicate genuinely disputed facts such as school enrollment fraud or accurate work schedules has deprived Petitioner of a meaningful opportunity to be heard and produced a custody outcome unsupported by the record.
7. Whether ethics practices can be enhanced with stronger guidance related to proceedings directly related to Administrative Staff exempt from M.D. Judicial Code of Ethics with mandatory recusal standard that at the very least mirror what Clerks are subject to, or whether to place more rigor on disclosure requirements for temporary interim judicial appointment where the Administrative Judge for pre-assignment phases should defer to appellate court where Trial Court HAJ or other key administrative staff report conflicted interest or mandatory recusal.

Statement of Jurisdiction

This Maryland Supreme Court has jurisdiction to review state law questions implicating judicial ethics, recusal standards, and fundamental due process protections. Petitioner seeks discretionary review to resolve recurring and consequential state-wide issues of administrative control over judge assignments, the appearance and reality of judicial partiality, and the due process right to a fair adjudication of custody and modification claims.

Statement of the Case timeline and Facts

- July 2008 - My Ex Wife's Mother, Kathy Schwender began employment at Baltimore County Circuit Court for JOHN GRAYSON TURNBULL.
- 2011 all the circuit court reporters were retired,
 - The Court Reporter, Randy Mackubin provided by the transcript office to me had a 5 year work overlap with my Ex Mother-In-Law working directly for the Trial Court.
 - [Link: <https://www.cbsnews.com/baltimore/news/end-of-an-era-for-court-reporters/>]
- August 27, 2013 - JOHN GRAYSON TURNBULL retires [Exhibit of retirement Cakes cover multiple judges]
- August, 2013 - My Ex Wife's Mother begins working for KATHLEEN GALLOGLY COX.
- October, 2013 - one month later parties were Married in Leesburg, Virginia.
 - My Ex Wife's Mother worked for Trial Court HAJ longer than Petitioner and Ex Wife were married prior to separation, Judge Cox at time of filing at trial court,
 - My Ex Wife's Mother worked as Administrative Assistant and Case Manager, with various other role duties, well known to any chambers by position in courthouse, directly working in Family Law Offices and for three different Head Administrative Judge's (HAJ), Kathy was a tenured trial court employee from the onset.

RESPONDENT'S APPENDIX C

- July 13, 2015 - Minor Child Owen Jeffrey Barry born.
- August 2015 - Nicole Rush Hired as Judicial Clerk for Judge Cox, co-worker of Grandmother who was the Administrative Assistant to HAJ.
- September 2016 - Nicole Rush hired at Turnbull, Nicholson & Sanders as Associate Attorney
- March, 2020 - Petitioner and Respondent separated,
 - Since time of separation minor child, Owen Jeffrey Barry, has resided in the household of my Ex Wife's Mother, Kathy Schwender, at 29 Spring Glen Court,
 - Respondent maintains an alternate address at 24 Pickburn Ct. and since 2022 allegedly holds this as a false residence as part of alleged rental income fraud, tax fraud, child support & custody fraud, and school residency fraud according to Petitioner's credible allegations where Respondent reports child living at alternate address to authorities for the non-domiciled address.
- June 2020, My Ex Wife stops allowing all access to minor Child, begins alienating Petitioner,
- September 29, 2020 My Ex Wife filed for divorce, case C-03-FM-20-003949,
- December 14, 2020 Petitioner files response to complaint for divorce,
- December 19 2020 Ex Mother-in-law's boss KATHLEEN GALLOGLY COX retires
- December 19, 2020 RUTH ANNE JACKUBOWSKI becomes Trial Court HAJ
- February 24, 2021 - Petitioner Request for complaint form is acknowledged by Committee on Judicial Deficit, [exhibit as filed in record]
 - Petitioner alleges Respondent intentionally prevented Owen (then age 5) from attending Petitioner's winter vacation in 2021 during a year-long alienation, leading to counseling being sought by Respondent for Owen for "trauma resulting from parental alienation of not seeing his father."
- February 25, 2021 - Judge Jackubowski Administratively signs and issues 'Protective Order' against Petitioner without trial or proceedings, the very next day follow complaint form request.
- February 26, 2021 - Judge Jackubowski assigns Judge Cox to case C-03-FM-20-003949 with Intensive Services Track 3C Assigned,
 - A clear and shocking conflict of interest, my Ex Mother-in-law worked directly for both the assigning Judge as well as the Retired Judge Assigned on 2/26/21.
 - Judicial timeline from this assignment put Settlement at 8/18/21
 - Exhibit as filed in record.
 - Judicial Assignment took **150 Days** where no Judge was assigned, defaulting all matters to the HAJ during pre-assignment, including scheduling and decisions on transfer of venue, interim custody, and full oversight of Family Support Services.

11-25-26
AB

RESPONDENT'S APPENDIX C

- My Ex Mother-in-law worked for and knew in Baltimore County Circuit Court four (4) Judges directly responsible for the day to day operations and structure of Courthouse oversight in this matter, assignment and case management impacting C-03-FM-20-003949 directly, with my Ex Mother-in-law working in the Circuit Court from the outset of the Trial Court case.
- March 25, 2021 - Judge Cavanaugh Assigns Keith Truffer to C-03-FM-20-003949
 - Exhibit Judge Cavanaugh Appoints Keith Truffer where Ruth Jackubowski assigned a retired Judge Cox originally.
 - Exhibit Judge Cavanaugh Sr. Cake as filed in record.
- March 29, 2021 – Respondent Motion for Pendente Lite
- 06/16/2021 09:00:00 Hearing - Pendente Lite Truffer, Keith R.
 - Respondent and her Lawyer Nicole Rush were at Nicole's offices, fully prepared for a remote trial, showing "insider" information. [Transcripts, 6/16/21]
 - Petitioner was in fact at the courthouse, physical barred from entry due to newly implemented "CoVID" closure measure.
 - Petitioner was materially impacted from mobile phone connectivity & bandwidth issues, Petitioner was remote via Zoom on the emptied courthouse steps during hearing where:
 - Transcripts of a remote hearing of such a type would not contain segments where full statements were blocked entirely or degraded by transmission issues, the corresponding audio would simply be silence.
 - Audio quality heard by Petitioner would also not be reflected where missed or misunderstanding of Judges statements were compounded by Petitioner's degraded ability physically present evidence at initial proceeding, responding to opposition were all materially impacted.
- June, 2021 - Verifiable Proof Respondent's alienation constituted an emotional torment & abuse exhibited, this is what my Son goes through while his mother leaves him nightly and he wants to be with Dad.

Child Abuse, Trial Court enforced and furthers the trauma from by violating petitioners right to a Fair Venue:

1. <https://drive.google.com/file/d/1PmCkA66HbhPLgvFd7UOBiaLMXbLmxKfb>
2. <https://drive.google.com/file/d/1Cd58IUUVIwDU41X-vnLNs-sk85oA2ryag>

My Son Could not Breathe from Grief caused by solely this Courts delay and refusal to remand for proper hearing.

- July, 2021 - Nicole Rush begins work for Young & Valkenet as Associate Attorney

11-26-25
JCB

RESPONDENT'S APPENDIX C

- October 29, 2021 - first filed conflict of interest related to perception of improper venue, and a widely-conflicted judiciary compared to alternate and more appropriate venue of Baltimore City Circuit Court.
- January 12, 2022 – Same day as decree, Respondent agrees to not follow the decree that was blindly drafted to their request.
- July 25, 2023 RUTH ANNE JACKUBOWSKI retires
 - **1,029 days** my case was captured under hostile Administrative oversight with no legal or viable route for a Pro Se party to have transfer of venue without the default ruling being sent assessed fairly per MD Code covering venue transfer, not allowing my motion for venue transfer based on Venue Fitness was structurally prejudice against Petitioner through bias toward my Ex Mother-in-laws employment overlap transitioning HAJ role to Jackubowski from retiring Cox.
 - C-03-FM-20-003949 held under direct authority of my Ex Wife's Mother's Direct Boss at the time of divorce filing, and longer still through unduly delayed and mishandled proceedings.
 - This circumstance of a current court employee's bringing Family Law litigation to their workplace would benefit from mandatory recusal standards to apply *adhuc magis*.
- July 25, 2023 DENNIS M. ROBINSON, JR. begins as new HAJ
- January 26, 2024 – Hearing Winter Vacation, all flexibility for Owen was ordered to be ended, and Petitioner was punished by the of taking a week away from Petitioner. This was enacted without a best interests assessment of a child already emotionally distressed from limited time with Dad causing more undue harm of restricted access.
- February 26, 2024 – Petitioner files to modify earnings with-holdings, Truffer's chambers directly entered ~\$5,400 in wrong amounts – and refuses to correct the issue, I was never ordered, even by him, to pay Spousal Support Arrearages, The Judge Personally and secretly has enforced me to overpay ~\$5,400 in wrong never owed arrearages, an amount input by his offices according to Child support enforcement – child support offices agreed I appeared to have never owed the amount.
- March 5, 2024 Petitioner motions for Transfer of Venue where the new HAJ "Robinson" as a presumed now "Neutral" party in the role with decision making over venue transfer, Keith Truffer intercepted the motion and 'played dumb' to the requests baseline intent, denying "Motion to Transfer Venue" - Petitioners motion to transfer venue should have been adjudicated by the HAJ, was a further camouflage of Petitioners brought venue concerns.
- October 30, 2025 Keith Truffer order Winter Vacation, Clerk never issued a Summons as noted by opposition response, offering only '*Iustitia diluta*,' even in Trial Courts granting a motion. The Fact this motion is necessary annually where it could easily be amended if full best interests were assessed.

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- Head Administrative Judge (HAJ) of Baltimore County Circuit Court is in charge of assignments, clerk function, case-flow, weather closings, and CoVID measures, and ruling of motions to change Venue.

Reasons for Granting Certiorari

- The objective-observer recusal standard turns on accurate facts. A demonstrable, documented misstatement about a party relative's employment that touches assignment and clerk functions is material to any appearance-of-bias inquiry and undermines appellate review if left uncorrected.
- The questions presented raise state-wide recurring, important issues about how judicial administrative structures and longtime courthouse employees' familial relationships affect assignment, recusal, and the appearance of impartiality in matters of Family Law. This Court's guidance is necessary to ensure uniform application of Maryland Rule standards and to preserve public confidence in the judiciary related to mandatory recusal standards of current employees.
- The case involves structural due process concerns where administrative control over assignments, pre-assignment phases, alleged one-sided fact finding, and prolonged scheduling delays combined to produce substantial prejudice to fundamental custody interests. The Court of Appeals should clarify the standards for relief when administrative practices, rather than only a judge's isolated conduct, create systemic risk of bias, and take into account the full record of facts available without complaints about shovels in a matter of carrying out due process,
- The record contains documentary evidence (assignment memoranda, protective order documents, counseling communications, payment records, and alleged phone contents) that, if credited by a fact finder, would warrant vacatur or reassignment. Certiorari is appropriate to authorize limited, expedited review and to prevent continued injustice to the minor child and Petitioner.
- The combination of (A) a current, long-tenured administrative assistant who is the close relative of a party, (B) the presiding judge's on-the-record acknowledgement of familiarity, and (C) assignment/scheduling anomalies supplies an objective factual predicate that warrants disclosure and renewed scrutiny under Md. Rule 18-102.11 and Gen. Prov. § 5-501.
- Excluding the child and a material caregiver and denying targeted discovery curtailed development of the factual record on custody-critical issues; the exclusion of material evidence without specific on-the-record balancing supports relief where the omissions were outcome-determinative.

Argument

1. The appearance-of-bias claim rests on objective circumstances and reasonable perceptions arising from the record and publicly verifiable facts, not on speculation or conclusory allegations. Petitioner henceforth produces supporting documents and exhibits that meet evidentiary proof to the factual predicate for this petition.
2. Judicial Ethics, Appearance of Impropriety, and Recusal Obligations Require Review and Relief

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- Maryland judicial ethics require judges to avoid not only actual impropriety but also conduct that creates a reasonable perception of impropriety and to disqualify themselves where impartiality might reasonably be questioned.
 - The tight nexus of employment, social interaction, and familial ties here relate to Respondent's Mother, a long-time (13+ years at the onset of this case) judicial assistant to multiple Head Administrative Judges of the Trial Court, overlapping clerk-ships which became respondents attorneys, prior employment associations, and social celebrations captured in photographic evidence creates a compelling factual predicate for recusal and for the Court to define administrative safeguards.
 - Assignment of the retiring Judge Cox to new case brought by her assistant's daughter, and other judges with identifiable personal or professional ties to Kathy Schwender, without transparent mechanisms to evaluate and avoid conflict, violated the imperative that litigants receive hearings before impartial adjudicators and that the public maintain confidence in judicial independence.
2. Venue Impropriety, procedural due process was denied by ex-parte communications, pre-assignment case handling, clerical errors and alterations of filings, one-sided custody orders, financial outcomes, protective orders and administrative assignment practices
- A Circuit Court's Protective Order and subsequent custody-related rulings were issued in a context where Petitioner alleges the initiating party's mother worked inside the courthouses involved with direct access to Judges and assignment channels, and where Petitioner's repeated administrative complaints were delayed or ineffective. Where protective relief is issued or sustained following administrative processes that favor a party with inside access, due process protections and opportunity to be heard by neutral decision maker are compromised.
 - The fact Respondent sought counseling for the child citing "trauma from not seeing his father" after denying visitation supports a claim that the protective proceedings produced and perpetuated the very harm the court purported to remedy.
3. Structural Bias Through Administrative Delay and Staff Influence Requires Broader Remedies
- Whether prolonged administrative scheduling delays and judge assignment practices, which Petitioner repeatedly challenged before and during proceedings and which were controlled or heavily influenced by courthouse staff connected to Respondent's family, or whether a tainted initiation of proceedings created structural bias that materially prejudiced Petitioner's custodial rights that justifies vacatur, transfer of venue, reassignment, and investigatory relief where months of time were consumed by administrative delay to Respondents favor, compounded with damaging total alienation of Father.
 - Recurrent, protracted scheduling delays and judge reassignments timed with retirements and social engagements, when coupled with administrative control by personnel connected to a party, function as mechanisms of deprivation.

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- Physical Procedure change prevented submission of evidence to the court where proceedings 6/16/21 were switched to “remote” only 15 minutes before the hearing began at 9:00am, with notice going out at 8:45am and 8:49am respectively from Lauren Prinkey and Keith Truffer. Respondent had parked 6/16/21 at 8:32am and was blocked from courthouse access due to “CoVID” shutdown controlled by Judge Cox’s discretion at the time I believe in part to disrupt Petitioner’s ability to join the proceeding.
 - Petitioner was forced by short-notice to only be capable of video conference, joined through mobile phone connection on the steps of the Circuit Courthouse, this limited the ability of Petitioner to present evidence physically to the court of conflict of interest, the impactful effects of abuse & alienation where the mother withheld minor child from father for a minimum of 365 days with no access, where the child demonstrably harmed by the mothers attempts to financial gain through extortion an agreement to ‘alimony for life’
 - Petitioner’s extortion was amplified by Judicial ‘lock’ of Judges associated with Respondent’s Mother, Kathy Schwender through pre-assignment phases unto Keith Truffer, all of whom had a direct working overlap with Kathy Schwender. Venue guaranteed outcomes for any reasonable observer. The Ex Mother in law worked at the Courthouse for +13 Years and her daughter filed maliciously a petition overseen by the Judge her mother was Assistant to, Mother then alienated the father intentionally for a year, commits address fraud where now the child lives with his grandmother full-time – while the mother holds full custody and a separate address on record.
 - Father is without a simple remand, denied due process and Justice.
 - Administrative design of Circuit Court enables a party-affiliated employee’s standing to influence assignments and scheduling materially affecting a litigant’s access to an impartial forum, the remedy must reach beyond case-specific recusal and include vacatur, reassignment, and investigatory measures.
 - **Petitioner suffered concrete harm and prejudice:** hundreds of days of lost custodial time now potentially leading to the thousands during formative years for the minor child, significant financial transfers benefiting the household of courthouse staff, and emotional harm culminating in documented emotional breakdowns of both father and minor child from revenge actions directly of the mother. These harms satisfy the need for appellate intervention and equitable relief.
4. How the Trial Court’s Administrative Process failures violate Petitioners right to due process,
- Basic fact pattern:
 - A judge’s relationship to a courthouse employee who is a current employee is materially different (for appearance and access reasons) than to a former employee.
 - Legal principle that matters most
 - How Respondent’s argument meets that principal
5. How Kathy Schwender’s Employment for Baltimore County Circuit Court with close ties to Clerks office and Case Assignment can have created a conflict or an appearance of bias

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- Basic fact pattern:
 - Kathy Schwender was the Administrative Assistant for the Administrative Judge of Baltimore County Circuit Court, worked closely in the Family Law Department.
 - Kathy Schwender worked as a Chambers Case Manager for John Grason Turnbull II 2008-2013, and from 2013 through assignment of Keith Truffer in 2021 [exhibit ssssss], Kathy's tenure lasted at least through retirement for KathleenHow the Appellate Court's Opinion err'd
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- Basic fact pattern:
 - Kathy Schwender was the Administrative Assistant for the Administrative Judge of Baltimore County Circuit Court, worked closely in the Family Law Department.
 - Kathy Schwender worked as a Chambers Case Manager for John Grason Turnbull II 2008-2013, and from 2013 through assignment of Keith Truffer in 2021 [exhibit as per record], Kathy's tenure lasted at least through retirement for Kathleen Gallogly Cox, Retired February 2, 2021. where she further Supported Kathleen Cavanaugh and Ruth Anne Jackubowski maintaining role duties administrating the circuit court proceedings,

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- Kathy Schwender is a prolific baker, and often would furnish Baltimore Circuit Court Judges with personalized retirement cakes, other office and holiday functions by tradition, notably for Judge Cavanaugh's retirement, personal cakes presented being only a fraction of likely baked cakes based on the sheer number discovered,
- Kathy Schwender also worked directly for Judge Ruth Jacobowski through transition of Administrative Judges, Ruth was Circuit Administrative Judge: December 19, 2020 - June 19, 2023, Retirement: July 25, 2023.
- The Administrative Judge Oversees all aspects of the courthouse and interacts between each and every Chambers, assignment and clerk functions, has direct oversight into and including weather closures, CoVID policies, and directly has oversight to cases prior to 'official' judicial assignment.
- The Administrative Judge has Jurisdiction to rule on motions to transfer Venue at all phases of a cases life-cycle under Circuit Court rules, trapping my case once my ex wife filed it in Baltimore County under oversight of her Mothers direct reports.
- Proximity of Kathy Schwender to functions and handling of case would reasonably raise questions as stated by Judge Keith Truffer Quote "it is entirely reasonable for any healthy person to wonder given the fact that Miss Schwender has worked here, whether he or she is getting a fair shake in the litigation." Should have full stop allowed proceedings from the very beginning to be moved.
- Kathy provides substantial day-to-day care for the child currently and through the separation period and minor child was admitted to have been regularly present in trial courthouse and district courthouses on multiple occasions during the life-cycle of the case.
- Legal principle that matters most
 - Maryland law requires judges to avoid situations in which "a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned." This protects both actual impartiality and the appearance of impartiality. The standard is objective: what would a reasonable, informed observer conclude (Md. Rule 18-102.11 and controlling caselaw).
 - How this fits statutory ethics framing (Gen. Prov. § 5-501 et seq.) Even absent proof of actual bias, the Maryland Public Ethics Law and judicial recusal rules prohibit participation by officials when an interest—personal, familial, or financial—exists such that the official's participation would violate the public trust. An interest that is reasonably likely to affect, or appear to affect, an adjudicative outcome triggers the duty either to disclose or to decline participation.
- How Respondant's Mother Kathy Schwender's employment nexus can meet that standard (how the appearance arises)
 - **Employment and role.** Kathy Schwender served as an administrative/judicial assistant in the Baltimore County Circuit Court Family Law division, functioning as a chambers case

manager and administrative assistant to successive judges (Judge John Grason Turnbull II, Judge Kathleen Gallogly Cox, and later assisting Judge Ruth Jakubowski and Administrative Judge oversight).

- **Direct Working Relationship.** Both Respondent Attorney's had a work overlap as Clerk for Judges employed alongside Kathy Schwender. Nicole Rush notably working for Turnbull and Associates at the onset of proceedings.
- **Access to case processing.** Because administrative assistants and assignment personnel participate in pre-assignment logistics and calendaring, a reasonably informed observer could perceive that Ms. Schwender's proximity to chambers as well as assignment and clerical functions created opportunities, directly or indirectly, for undisclosed communications, preferential handling of filings, scheduling, or other procedural advantages for her daughter, particularly when personal numbers of Judges and assignment personnel found in Kathy's discarded phone. Keith Truffer attempting to on multiple occasions remove evidence from record related to Judicial Conflict of Interest.
- **Institutional influence through relationships.** Longstanding, personal working relationships between a party's close relative and multiple courthouse decision makers can create the perception that informal influence or preferential treatment is possible, even if no explicit misconduct occurred.
- **Overlap of care-giving and courthouse presence.** When the relative who works in the courthouse is also the child's primary caregiver and is regularly present at court, the practical benefits flowing from custody and case outcomes become closely aligned with the courthouse relationship, heightening an objective appearance of conflicting interests.
- **Personal stake and presence.** Ms. Schwender provided substantial day-to-day care for the child during the separation period and the child was present at courthouse facilities on multiple occasions; she also maintained social ties to judges and staff (e.g., courtesy recognitions such as baked goods for retirements), demonstrating frequent informal interaction across chambers, e.g., was "well known."
- **Demonstrated Intimate Knowledge of Venue.** Nicole Rush and her Client Amy Schwender mysteriously appeared in Nicole's offices the morning of the proceedings in June for Pendente Lite, which co-incided with CoVID closures. Petitioner was left barred from entering the Circuit Court having only received notice of a remote hearing 30 minutes prior its scheduled start. Evidenced by a kept Parking Garage Entry Ticket.
- **Judge's on-the-record acknowledgment.** The presiding judge acknowledged knowing Ms. Schwender "very well" in open court, which underscores the public-facing recognition of a close professional relationship.
- **Insufficiency of bare acquaintance.** Although mere acquaintance with courthouse personnel is not automatically disqualifying, the combination of:
 - (a) a judge's explicit statement of knowing the relative "very well,"

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- (b) the relative's institutional role in the Family Law Division,
 - (c) documented courthouse presence during material proceedings, and
 - (d) case management anomalies and clerk mishandling
- together facts satisfy the objective reasonable-observer test for an appearance of partiality unless fully disclosed and explained on the record.
6. How the Ripkin family connection to Angelos estate can create a conflict or an appearance of bias
- Basic fact pattern:
 - Judge Laura S. Ripken is married to Cal Ripken Jr.
 - Judge Keith R. Truffer presided over litigation connected to the Angelos estate and related high-value transactions in Baltimore County benefiting Cal Ripken Jr.
 - "Truffer is the Guy who made sure my Husband Cal got his piece of the Orioles. This unrelated family law case involving someone I don't know could call to Question Truffer's integrity, Truffer's integrity being proven questionable based on timeline could impact the rulings integrity involved with my Husband getting the Orioles baseball team. I'll see what I can do." - is what a reasonable observer would certainly discern.
 - A reasonable observer would think Laura Ripkin improper to not have disclosed, or even more appropriately recused themselves in matters involving Keith Truffer, when even a collegiate affiliation can lean bias, citing Petitioners own request for judicial recusal these matters should not be discretionary to disclose.
 - If a judge on an appellate panel (or any judge reviewing a related matter) has a close personal or family tie to a person or entity that stands to gain or lose from outcomes connected to those proceedings, that relation can create either an actual conflict or, more commonly, a disqualifying appearance of partiality.
 - Appellate Court Judge's participation with a failure to disclose an interest that could be perceived as more than 'de minimus' adds further issues of perception of mis-aligned interests regarding impropriety such that it would be reasonable to question the impartiality of the panel's adjudication and the fairness of the appellate process in assessment of the trial courts abuse of Judicial discretion.
 - Legal principle that matters most
 - Maryland law requires judges to avoid situations in which "a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned." This protects both actual impartiality and the appearance of impartiality. The standard is objective: what would a reasonable, informed observer conclude.
 - How the Ripken-Truffer/Angelos nexus can meet that standard (how the appearance arises)

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- Financial or institutional nexus: if the Angelos litigation produced financial outcomes (ownership changes, asset transfers, professional opportunities, employment or contract awards) that directly or indirectly benefit Cal Ripken, his family, or entities associated with him, a reasonable observer could see Judge Ripken's participation on related appellate panels as problematic unless fully disclosed and evaluated.
 - Public prominence and optics: Cal Ripken is a highly visible public figure in Baltimore; public awareness of his marriage to a sitting appellate judge amplifies the appearance risk when matters touching prominent local assets (like the Orioles or related estate litigation) are before judges from the same court system.
 - Institutional overlap: if the trial judge's (Truffer) presiding over matters that had downstream effects connected to people or entities linked to the Ripken family, Judge Ripkin's participating in matters of judicial impropriety and ethics on a routine panel reviewing Keith Truffer's conduct can look less "routine" to an outside observer and more like concentric networks of influence when the Judges discretion in question could risk review of rulings made by Keith Truffer that benefit Judge Ripkin, or where-by Judge Ripkin would from a public perspective would look more than likely "owe a favor" than not.
 - In the present appeal, the record reflects that Laura Ripkin maintained a personal or professional relationship with a party to the proceeding, in this case a Judge in Question Keith Truffer, or held an interest in a business entity materially affected by the outcome. Under § 5-501, such involvement constitutes a disqualifying interest, mandating recusal or corrective action.
 - Moreover, the appearance of impropriety - whether through familial ties, employment affiliations, or prior advocacy - undermines public confidence in the impartiality of the judicial process. The Ethics Law does not require proof of actual bias; the mere potential for compromised objectivity is sufficient to trigger its protections.
 - Failure to disclose: the concern increases if the appellate judge did not disclose any potentially relevant connection (even a deniable or indirect one). Non-disclosure of relevant facts that a reasonable person would consider material aggravates the appearance problem.
4. Instances of Appellate Court Omissions and Oversights related to Spousal Support Arrears
- related to employment of Respondent's Mother in record and "Spousal Support" arrears
Petitioner has been forced to pay that which was never an owed category.
5. Appropriate Relief and Narrow, Targeted Remedial Measures
- At minimum, this Court should grant Certiorari, vacate orders entered under the tainted process, and remand for reassignment to an independent judge outside Baltimore County.
 - The Court should authorize an independent investigation or appointment of a special master to review assignment practices and to determine whether institutional reforms or sanctions are warranted for mandatory recusal, or if a failure of ethics occurred when knowingly Respondent

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filed petition where her Mother, Kathy Schwender, worked as Administrative Assistant to the head Administrative Judge of the Circuit Court, where by Default the Head Administrative Judge oversees all proceedings in the pre-assignment phase that blocked equitable relief from the outset, placing Petitioner at the discretion of ex-mother in law's direct Supervisor.

Conclusion and Prayer for Relief

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari, reverse the judgments and orders entered under the circumstances described, vacate/stay custody determinations obtained through the challenged process pending remand, order reassignment to an independent judge, authorize limited expedited discovery.

Respectfully submitted, Jeffrey Francis Barry, *Pro Se*
3502 E. Pratt Street
Baltimore, MD 21224
Email: jfbarry87@gmail.com
Phone: +1 (667) 212-8422

11/26/25

Certificate of Service,

I HEREBY CERTIFY that on the 26th day of November 2025, a copy of the foregoing document was served via being mailed first class, postage pre-paid upon:

Amy Schwender 29 Spring Glen Court Cockeysville, MD 21030	Hunter Gallagher 999 Corporate Blvd., Suite 100 Linthicum Heights, MD 21090
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Jeffrey R. Barry, *Pro Se*

11/26/2025

Address:

3502 E. PRATT ST.

BALTIMORE MD, 21224

email: JFBARRY87@gmail.com // phone: +1.667-212-8422

JEFFREY F. BARRY	*	IN THE
<i>Petitioner</i>	*	SUPREME COURT OF
v.	*	MARYLAND
AMY K. SCHWENDER	*	Case No.: SCM-PET-0296-2025
<i>Respondent</i>	*	Related Case No.s:
		ACM-REG-2522-2024
	*	C-03-FM-20-003949

* * * * *

MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI

NOW COMES respondent Amy Schwender, formerly known as Amy Barry (hereafter, “Mother” or “Respondent”), by and through her attorneys Hunter Gallagher Esquire and Law Offices of James E. Crawford Jr. and Associates, LLC, and files this Motion To Dismiss Petition for Writ of Certiorari, pursuant to MD Rules 8-302(a); 8-431, and states the following in support:

1. That petitioner Jeffrey Barry (hereafter, “Father” or “Petitioner”) filed an untimely petition for writ of certiorari.
2. That an appeal not taken within the required time after a final order must be dismissed. Sewell v. Sewell's Adm'R, 1 H. & G. 9, 10 (1826); Riviere v. Quinlan, 210 Md. 76 (1956). The relevant procedural history follows.
3. That on December 4, 2024, Father filed a petition to modify the custody order present in the parties’ judgment of absolute divorce, under case number C-03-FM-20-003949.

4. That on January 30, 2025, Father's petition for custody was heard on the merits. At the hearing's conclusion and on the record, Father's petition was denied, based on a failure to show a material change in circumstances, which is a threshold issue for custody modification. McMahon v. Piazza, 162 Md. App. 588, 593–594 (2004)

5. That on February 28, 2025, Father noted an appeal, pursuant to MD Rule 8-201(a), to the Appellate Court of Maryland (hereafter, "ACM"), whose case number is ACM-REG-2522-2024.

6. That on August 14, 2025, ACM issued an unreported opinion, affirming the judgment of the Circuit Court for Baltimore County. **EXHIBIT A** (ACM Unreported Opinion).¹

7. That on September 2, 2025, ACM issued its mandate. **EXHIBIT B** (ACM Mandate).

8. That on September 18, 2025, the Clerk of Supreme Court of Maryland received Father's Petition for Writ of Certiorari.

¹ Petitioner conflates justiciable and non-justiciable issues in his petition for writ of certiorari. Many issues raised are problems the Petitioner has with how his divorce case unfolded that culminated in a three-day trial and a judgment of absolute divorce, entered on January 13, 2022. Those untimely issues were not properly raised in the ACM appeal and are reappearing in Father's petition for writ. Petitioner has been *pro se* at every stage of this domestic litigation, since Mother filed for divorce. The unreported opinion addressed the issues timely raised; see Father's ACM brief for a host of stale issues, which are often conclusory or speculative.

Here is a brief reply to Father's Petition §III Reasons for Granting the Petition. There are already standards in place to maintain judicial integrity, viz., the Maryland Code of Judicial Conduct, which includes recusal standards. Those satisfactorily deal with the issues raised by Petitioner in the petition for writ of certiorari, all of which turn on the alleged prejudice against a *pro se* litigant or bias towards Mother, whose mother—i.e., Petitioner's previous mother-in-law—was a judicial assistant in the Circuit Court for Baltimore County. In short, Petitioner's appeal to the Supreme Court invites the creation of bad law by obfuscating long-established and functioning standards. Had it been timely filed, consideration of the issues in the petition for writ of certiorari to the Supreme Court of Maryland would have been a waste of judicial resources.

9. That MD Rule 8-302(a) states, "If a notice of appeal to the [Supreme Court of Maryland] has been filed pursuant to Rule 8-201, a petition for a writ of certiorari may be filed either before or after the Appellate Court [of Maryland] has rendered a decision, but not later than the later of 15 days after the Appellate Court issues its mandate or 30 days after the filing of that court's opinion."

10. That Petitioner's filing was received thirty-five (35) days after the ACM informal opinion was filed and sixteen (16) days after ACM's mandate was issued.

11. That the petition for writ of certiorari, which was filed by Father and Petitioner, must be dismissed as a matter of law.

WHEREFORE, Mother and Respondent Amy K. Schwender respectfully requests that this Honorable Court:

- A. **GRANT** Respondent's Motion To Dismiss Petition for Writ of Certiorari;
- B. **ORDER** that the Petition for Writ of Certiorari be **DISMISSED**; and,
- D. **GRANT** any such other and further relief that is equitable to legally appropriate.

Respectfully submitted,



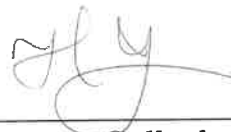
Hunter Gallagher, Esquire
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The Law Offices of James E. Crawford, Jr.
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Phone No.: 443-709-9999
Facsimile: 443-347-5912
Email: Hunter@JamesCrawfordLaw.com
*Attorney for Amy Schwender, Respondent
and Mother*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 26, 2025, a copy of the foregoing document was served via MDEC and e-mail upon:

Jeffrey Barry
Petitioner and Father, Pro Se
Jfbarry87@gmail.com
3502 E. Pratt St.
Baltimore, MD 21224



Hunter Gallagher, Esquire
AIS No.: 2206140029

RESPONDENT'S APPENDIX E

JEFFREY FRANCIS BARRY	*	IN THE
APPELLANT,	*	APPELLATE COURT
v.	*	OF
AMY KATHLEEN SCHWENDER	*	MARYLAND
APPELLEE.	*	Case No.: ACM-REG-2522-2024
	*	Circuit Court No.: C-03-FM-20-003949
	*	Notice of Appeal Filed: 2/28/2025

* * * * *

Barry v. Schwender – Appellate Brief

I. Introduction

Appellant, Jeffrey F. Barry, respectfully submits this appellate brief challenging the Circuit Court for Baltimore County’s custody determination, financial rulings, and procedural failures. The trial court’s demonstrable judicial bias, clerical errors (e.g., failure to issue summons), reliance on misleading testimony, and procedural prejudice against a *Pro Se* father severely undermined the fairness of the proceedings and considerations of the best interests of minor child Owen Jeffrey Barry (age 9) were not prioritized.

This appeal raises serious concerns about undue influence within the courthouse. Appellee’s mother worked extensively within the Baltimore County Circuit Court, serving a tenure plus in the Family Law Office. Owen Barry has frequented these court offices, where multiple staff members—including Clerk Hunter Gallagher—have acknowledged meeting him. Kathy Schwender, Appellee’s mother, remained employed in the Family Law Department through the case’s initiation, with her direct supervisor at one time presiding over the matter.

Procedural decision-making and judicial assignments appear to have favored Appellee, raising significant concerns about impartiality. Appellant seeks reversal due to judicial abuse of discretion, evidentiary errors, financial mismanagement, and improper influence affecting case outcomes.

II. Procedural History

This appeal arises from rulings issued in **Case No. C-03-FM-20-003949**, where the Circuit Court for Baltimore County:

- 1. **The Circuit Court denied Appellant’s motion to modify custody**, disregarding substantial evidence showing custody with Appellee was contrary to the child’s best interests.
- 2. **Administrative procedural control**, including case assignment decisions, further undermined Appellant’s ability to receive an impartial trial.

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3. **Failed to properly issue a summons**, obstructing Appellant's ability to litigate custody and procedural matters, violating his due process rights.
4. **Ignored documented proof that Appellant satisfied his financial obligations**, denying due process to amend Earnings Withholding Order (EWO).
5. **Despite Judge Keith Truffer's admitted personal and working relationship with Appellee's mother**, he did not recuse himself. His own acknowledgment that fairness could be questioned underscores serious impartiality concerns.
6. **Exhibited institutional bias favoring Appellee**, whose mother is a longtime Baltimore County Circuit and District Court employee, resulting in improper financial benefit to Appellee at Appellant's and minor child's both expense.

III. Grounds for Appeal & Supporting Case Law

A. Judicial Abuse of Discretion

The trial court's misrepresentation of key facts, failure to critically assess custody evidence, improper weighing of expert testimony, and exclusion of critical witness statements constitute an abuse of discretion. Rather than conducting an independent evaluation, the court blindly accepted Appellee's narrative, disregarding substantial contradictory evidence provided by the Appellant.

Maryland precedent requires judges to independently assess custody claims rather than defer to one party's assertions (*Levitt v. Levitt*, 79 Md. App. 394 (1989)). Furthermore, Maryland law mandates that custody determinations prioritize the best interests of the child (*McDermott v. Dougherty*, 385 Md. 320 (2005)), yet the trial court ignored recommendations to evaluate the mother's mental health while requiring the father to undergo an evaluation of Court Psychiatrist after Appellant presented evidence of Appellee's rampant emotional abuse of himself and Owen Barry minor child (age 9). Such disregard directly contradicts established principles of custody law and expert testimony reliance in family matters (*Gillespie v. Gillespie*, 206 Md. App. 146 (2012)).

Additionally, the court failed to permit testimony from the minor child, Owen Barry (age 9), depriving him of the opportunity to express his preferences and concerns — an exclusion that severely undermined the fairness of the proceedings (*Kadish v. Kadish*, 2022 Md. App.).

Maryland courts recognize the importance of a child's voice in custody matters, and the trial court's failure to consider this evidence further supports reversal of its ruling. Particularly where the minor child is very comfortable in Court and is of a maturity to understand the situation it is warranted, Owen is asking to move in full-time with Dad.

Appellant's claim is Owen expresses he is tired of spending School Days off and Summer Breaks sitting in District Court Administrative Offices with Grandma while not with Dad. Further if testifying was not deemed appropriate with the history of Appellee's attempts and claims for minor child needing Therapy, which Appellant refutes, that the court would not have supported Appellants suggestion of an expert Court appointed Psychiatrist.

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This abuse of discretion demands appellate intervention to ensure that custody determinations reflect impartial judicial evaluation, proper consideration of expert evidence, and adherence to legal precedent protecting the child's best interests.

B. Conflict of Interest & Venue Issues

Judicial integrity demands the avoidance of bias and conflicts of interest, yet the trial court failed to uphold impartiality in this case (*Jefferson-El v. State*, 330 Md. 648 (1993)). Appellee's mother has long been employed within the Baltimore County Circuit Court Family Law Department, presenting a direct conflict of interest that should have necessitated recusal or venue transfer.

Despite openly admitting to knowing Appellee's mother "very well", Judge Keith Truffer did not recuse himself, in violation of Md. Rule 18-102.11(a). Maryland precedent holds that a judge's failure to recuse when impartiality might reasonably be questioned constitutes reversible error (*Jefferson-El v. State*, 330 Md. 648 (1993)).

Additionally, the trial court failed to transfer venue, despite evidence of institutional bias favoring Appellee due to her mother's longstanding employment within the courthouse. Maryland courts emphasize that litigants must receive fair treatment, and conflicts of interest must be avoided to maintain public confidence in the judiciary (*In re Adoption of Baby Boy B.*, 291 Md. 702 (1981)).

C. Procedural Due Process Violation – Failure to Issue Summons

The trial court's failure to properly issue a summons obstructed Appellant's ability to present evidence, violating fundamental due process principles. Maryland law requires courts to safeguard procedural fairness, and errors preventing a litigant from fully litigating their case warrant reversal (*Williams v. Baltimore County Office of Child Support*, 2021 Md. App.).

Delays in summons issuance violate core fairness standards, reinforcing established precedent that procedural failures depriving a party of an opportunity to be heard must be rectified. The court's oversight significantly prejudiced Appellant's rights, further supporting the need for appellate intervention.

D. Judicial Prejudice Against a Pro Se Father & Evidentiary Errors

The trial court demonstrated clear procedural bias against Appellant as a *Pro Se* litigant, applying evidentiary burdens unequally compared to the represented Appellee (*Fludd v. Kirkwood*, 2021 Md. App.). Maryland courts recognize judicial bias against pro se fathers as grounds for appellate intervention (*Jefferson-El v. State*, 330 Md. 648 (1993)).

Further, the court misrepresented statements from key witnesses, including Ashley Neuder, distorting the factual record to favor Appellee. Maryland law protects litigants from material misrepresentation that improperly influences judicial outcomes (*Levitt v. Levitt*, 79 Md. App. 394 (1989)). The failure to accurately present third-party testimony constitutes a due process violation, warranting appellate correction.

E. Misrepresentation of Parental Fitness & Financial Mismanagement

The trial court mischaracterized Appellant's ability to provide stable care, incorrectly assessed work schedule limitations, and erroneously dismissed financial concerns, leading to an unjust custody

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determination (Taylor v. Taylor, 306 Md. 290 (1986)). Maryland courts require all relevant parental fitness factors to be evaluated, and failure to do so is reversible error (Boswell v. Boswell, 352 Md. 204 (1998)).

Additionally, misallocation of child support funds has deprived the child of essential financial resources and stability. Maryland appellate courts have reversed custody rulings where financial mismanagement harmed the child's welfare (Peterson v. Peterson, 219 Md. App. 713 (2014)), reinforcing the necessity of financial transparency and fairness (Kelley v. Kelley, 200 Md. App. 436 (2011)). A custody arrangement that fails to ensure financial stability for the child is not legally sound.

F. Fraudulent School Enrollment & Failure to Consider Child's Best Interests

Appellee engaged in fraudulent enrollment of the child in an out-of-zone school, a deliberate representation courts have previously sanctioned (London S. v. Baltimore County Board of Education, 2019 Md. App.). Misleading the court regarding residency and school placement impacts custody determinations, and address fraud is a recognized factor in evaluating parental fitness (Brown v. Brown, 195 Md. App. 72 (2010)).

where-by the definition of "bona fide domicile" from Superintendent's Rule 5150(II)(A) is "the place in which an individual has a settled connection for legal purposes and the place where a person has his/her true, fixed permanent home, habitation and principal establishment, without any present intention of leaving. It does not include a temporary residence established for the purpose of free school attendance in the public schools." Appellee made testimony "She would never even think about moving out" from her mother Kathy's.

Further, the trial court failed to prioritize the child's welfare, focusing solely on financial and procedural concerns instead of emotional and developmental needs (Sanders v. Sanders, 38 Md. App. 406 (1978)). Such an oversight requires appellate intervention to ensure custody reflects the child's well-being and stability with a proper basis established the Appellee is financially and revenge motivated, as well as untruthful based on testimony in January 2025.

G. Continuity Concerns in Custody Determination & Financial Transparency Failures

The trial court misinterpreted Appellant's existing custody arrangement, wrongfully framing shared summer custody as non-involvement when parties have an implied split custody.

Maryland law emphasizes stability in custody modifications, even when summer custody is evenly split (McDermott v. Dougherty, 385 Md. 320 (2005)). Failure to recognize an established custodial presence contradicts Maryland's continuity-based custody principles (Flynn v. May, 2004 Md. App.).

Moreover, Appellee failed to provide financial transparency, yet the trial court accepted unverified claims, violating Maryland's requirements for financial disclosure (Md. Code Fam. Law § 10-128). Misallocation of child support warrants appellate review (Peterson v. Peterson, 219 Md. App. 713 (2014)).

H. Opposition to Appellee's Attorney Fee Request & Due Process Violations

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Appellee's request for attorney fees should be denied, as trial court errors, judicial bias, and financial miscalculations obstructed Appellant's due process rights, forcing unnecessary litigation (Jefferson-El v. State, 330 Md. 648 (1993)). Maryland law recognizes improper financial penalties stemming from procedural violations as unconstitutional.

IV. Conclusion & Requested Relief

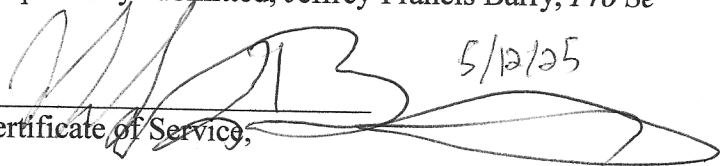
Given the judicial bias, procedural violations, failure to issue summons, evidentiary errors, financial mismanagement, and continuity concerns, Appellant respectfully requests appellate intervention.

Appellant seeks the following interventions:

1. Vacate the trial court's custody ruling due to judicial errors.
2. Remand for a new custody hearing before a different judge in a neutral venue.
3. Require proper judicial review of Appellee's parental fitness compared to Appellant, and verification of financial documents.
4. Grant Appellant modification to custody as proposed in the Modified Judgment of Absolute Divorce, granting Appellant sole legal and physical custody.
5. Investigate potential conflicts of interest regarding Appellee's mother's employment overlap during the period of Appellee filing in Baltimore County Circuit Court and appropriate updates to M.D. Judicial Code.

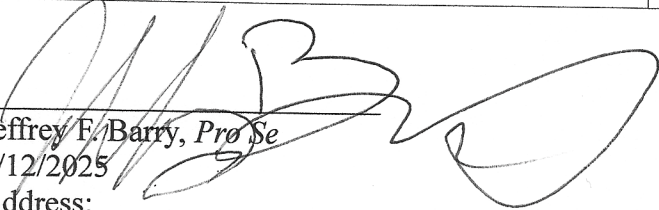
The current ruling is based on procedural failures, judicial prejudice against a *Pro Se* father, and factual misrepresentations, undermining its validity. Appellate intervention is necessary to secure a fair and just resolution.

Respectfully submitted, Jeffrey Francis Barry, *Pro Se*

 5/12/25
Certificate of Service,

I HEREBY CERTIFY that on this 12th day of May 2025, a copy of the foregoing document was served via being mailed first class, postage pre-paid upon:

Amy Schwender 29 Spring Glen Court Cockeysville, MD 21030	Hunter Gallagher 999 Corporate Blvd., Suite 100 Linthicum Heights, MD 21090
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Jeffrey F. Barry, *Pro Se*
5/12/2025

Address:
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1 In The Circuit Court for Baltimore County, Maryland
2 AMY BARRY

3
4 Vs. Case No. C-03-FM-20-3949

5
6 JEFFREY F. BARRY

7 Reporter's Official Transcript of Proceedings
8 Motions Hearing

9 Towson, Maryland

10 January 30, 2025

11
12 BEFORE: THE HONORABLE KEITH TRUFFER, ASSOCIATE JUDGE

13
14 APPEARANCES:

15
16 For the Plaintiff:

17 HUNTER GALLAGHER, ESQUIRE

18
19 For the Defendant:

20 Jeffrey F. Barry, pro se

21
22
23
24 Transcribed By:

25 Randy K. Mackubin, Official Court Reporter

1 THE COURT: We are on the record. At this
2 time the Court will call the case of what is now
3 Schwender versus Barry, C-03-FM-20-003949. Will
4 counsel and Mr. Barry identify yourselves for the
5 record, please.

6 MR. GALLAGHER: Good morning, Judge, hunter
7 Gallagher, G-A-L-L-A-G-H-E-R, on behalf of Amy
8 Schwender, formerly known as Amy Barry, to my right.

9 THE COURT: Good morning, Mr. Gallagher. Good
10 morning, Miss Schwender. And Mr. Barry.

11 MR. BARRY: Mr. Barry, pro se. Jeffrey
12 Francis Barry.

13 THE COURT: Good morning, Mr. Barry. We are
14 here on a number of motions and I will go through those
15 in a moment and address them. Initially though there
16 is -- one -- the principle motion is Mr. Barry's motion
17 to modify custody. But there is a matter I'd like to
18 address first. As I have occasion to say from time to
19 time, this is a court of law; it is not a playground,
20 not a street corner and for that reason there is a
21 certain formality that I expect that the parties and
22 counsel will abide by when here and, frankly, in their
23 filings with the Court. And I will just -- principally
24 this applies to everyone, but I will address Mr. Barry
25 particularly because there has been some times when he

1 has been unable to keep that in mind.

2 Mr. Barry, every time that you have been in
3 this courtroom I have addressed you by your title and
4 by your surname. I believe that is appropriate. It
5 shows my respect for you which, frankly, you deserve.
6 And in fact, everyone who comes in this courtroom is
7 entitled to that same respect. So throughout these
8 proceeding today and I would ask in the future and in
9 effect direct you in the future if you file pleadings
10 in the Court, please refer to parties and individuals
11 by their title and surname, not by their first name,
12 okay? Do you understand? I'm asking you a question.
13 Do you understand?

14 MR. BARRY: Directly, what you are saying --

15 THE COURT: Yes, sir.

16 MR. BARRY: -- in the context of that, Judge,
17 my addressing of you with your personal name --

18 THE COURT: Yes, sir.

19 MR. BARRY: -- is perhaps on your personal
20 relationship with the Plaintiff and --

21 THE COURT: It matters not.

22 MR. BARRY: I --

23 THE COURT: Well, just understand --

24 MR. BARRY: Well, I would also like to --

25 THE COURT: Wait. Before we go on to anything

1 else, I expect that you will do that in this courtroom,
2 okay? Because it is not going to help you if you
3 don't.

4 MR. BARRY: I have listened to you and heard
5 what you said.

6 THE COURT: Yes, sir. Very good. All right.
7 The motions that are before the Court are, as I said,
8 Mr. Barry's motion to modify custody that was filed on
9 December 4th of 2024, a motion which is not titled, but
10 it concerns the parties' minor child, Owen, his
11 schooling, that was filed on December 18th of 2024. I
12 held that sub curia for this hearing. And then there
13 was a motion that is titled motion to correct
14 appearance of Mr. Gallagher.

15 MR. BARRY: And I have one item to add to
16 that.

17 THE COURT: I'm sorry.

18 MR. BARRY: I have one item to add to that.

19 THE COURT: Let me finish what I'm saying here
20 and I will hear from you. That was filed on
21 January 17th of 2024. There were two other motions
22 filed by the Plaintiff, one of those was filed on
23 January 24th of 2024 and a motion for attorneys fees,
24 and then the most recent one, which was just filed
25 yesterday, a motion to quash a subpoena that had been

1 served by Mr. Barry on Miss Schwender concerning the
2 appearance of Owen at this hearing.

3 Is there another motion, Mr. Barry, that you
4 have filed that I haven't addressed?

5 MR. BARRY: Not in terms of pre-file, but
6 however, I would like to motion the Court to reconsider
7 transfer of venue. I think that the facts of this case
8 will still reflect that there was an express violation
9 of Maryland code at the outset of this case with it's
10 original settlement hearing where the original
11 settlement judge in fact had worked with and my other
12 parties' here lawyer, clerked with directly, and my
13 other parties' here ex mother-in-law worked with for 10
14 years in the Family Law Court's hearing.

15 So I do think it serves the interest of
16 justice that a venue where my son hadn't met and
17 interacted with most of the judges and regularly been
18 in the chambers of, which I think on admission
19 Mr. Gallagher here has met my son while he essentially
20 has been babysat while his mother slept. I would like
21 to consider a motion for transfer of venue. I don't
22 think I have acted that says I won't follow the
23 structure of what is put before me and when I say that
24 there is a perception of, I won't say bias here, but I
25 will say that you have a positive view of the other

1 party that is a preconceived view that you, yourself,
2 Judge, have probably gained over knowing the ex
3 mother-in-law in this case for probably much of while
4 you worked here considering her position.

5 THE COURT: All right.

6 MR. BARRY: I will assume that there wasn't a
7 motion to quash the subpoena --

8 THE COURT: Let me address. So Mr. Barry has
9 moved to reconsider a motion he has made a couple of
10 times and it is in part a venue transfer but also
11 asking me to recuse myself and thus have the case
12 transferred to another --

13 MR. BARRY: I don't ask that specifically.
14 Not you specifically, but I think that constitutionally
15 does meet a bar that it would suit the interest of
16 justice where this case were simply transferred to
17 Baltimore City where I don't think any of those
18 perceptions, although my ex mother-in-law does have
19 some legal times in the stance of Baltimore City with
20 the MDEC rollout here. But that is surely the basis of
21 my motion.

22 THE COURT: I understand. I do not take it
23 personally. You have every right -- and I can
24 understand your concern, but as I said in a prior
25 ruling on this issue, you raised it once before, while

1 I know Miss Schwender, I have had very little contact
2 here with her, within the courthouse at all.

3 MR. BARRY: As I say --

4 THE COURT: Excuse me, sir.

5 MR. BARRY: I don't mean to interrupt you --

6 THE COURT: You are going to have to let me
7 finish because there needs to be a record.

8 MR. BARRY: Before ruling, my last statement
9 on that is I do believe it is abuse of your discretion.

10 THE COURT: Okay. As I said, the Plaintiff,
11 Miss Schwender's mother works here. I have had limited
12 contact with her while she has been here. I have
13 certainly had no communication with her about this
14 case. I did not know the Plaintiff, Miss Schwender, at
15 all, had never met her until she was in court for the
16 first time here. I have received no information, zero,
17 none from any source about this case and the matters in
18 this case from any source other than evidence that has
19 been presented in this courtroom while Mr. Barry has
20 been present. I don't have any animus towards him. I
21 don't have any preference towards Miss Schwender. I
22 rule on the law on the facts as they are presented to
23 me.

24 So for those reasons, I'm going to deny the
25 motion to reconsider made orally here this morning.

1 MR. BARRY: Okay.

2 THE COURT: All right. Let me address the two
3 motions, the motion to modify and the motion concerning
4 schooling will be heard today after evidence. The
5 motion to quash subpoena is ripe. Have you seen a copy
6 of that? It was filed electronically yesterday.

7 MR. BARRY: Yes, I have seen a copy of the
8 motion to quash and in fact, that can be essentially
9 brought up here.

10 THE COURT: Yeah, I'm going to bring it up
11 right now.

12 MR. BARRY: Before we begin --

13 THE COURT: Mr. Barry, we have had problems
14 with this in the past. You need to -- I will give you
15 full opportunity to tell me anything you want to tell
16 me about the matters that are raised in these motions.
17 However, there is an ebb and flow to that and you have
18 to be patient and let, one, me speak. I need to make a
19 record; and two, what I say may be helpful to you; and
20 three, you must permit the other side an opportunity to
21 speak. So if you can hold off for a moment on that
22 motion, I'm going to hear first from the party who made
23 the motion, and that is Mr. Gallagher. All right.

24 MR. GALLAGHER: Thank you, Judge. Good
25 morning. I think I laid out my position in writing and

1 I'm sure the Court has had an opportunity to read Mr.
2 Barry's, I understand. I don't have anything to add.
3 I -- I think I put everything in writing.

4 THE COURT: Mr. Barry, why do you believe it
5 is important for Owen to testify here today?

6 MR. BARRY: Well, before beginning, and even
7 before addressing this, I think as his mother, that
8 question of where is my son today is important before I
9 answer that question. So my understanding from
10 speaking with him yesterday is his mother has informed
11 him he would be testifying and that when he did, he
12 would essentially go through the process of giving
13 testimony.

14 Now, I will state one thing in terms of my son
15 giving testimony, I don't believe that there is any
16 reason to cross examine a child, but in his best
17 interests outcome, he is nine years old. He is very
18 able to differentiate between right and wrong, good and
19 bad for him and he has no discomfort with the aspect of
20 the Court. He comes here with his grandmother. And in
21 fact, it is emotionally harmful for him to not let him
22 speak his mind in this process where he feels his
23 family is part of this establishment and process.

24 There is a lot of specifics in my petition
25 that I believe the other party has even made some

1 admission to say statements of fact about his
2 circumstance of neglect and about his circumstance
3 where he feels that he would be better off and what he
4 expresses to move in full-time with that.

5 Just on the matter of his testimony, I think
6 in terms of his best interests, the only way to not
7 have a back and forth discourse between myself and his
8 mother on what he has said, because in all truth, he is
9 a child. He may not want to express to his mother the
10 same thing he expresses to me and vice versa. Okay?
11 In terms of him being able to give his word for that,
12 it will in the long run, especially when he is a child
13 that in the past his mother has tried to put in
14 counseling, it will benefit him to at least feel he has
15 spoken his mind and in terms of appeals of this Court,
16 as far as I understand it, in terms of where the child
17 has been allowed to speak their mind, there is
18 something to do with appeals and I fully intend to
19 appeal this case if my son is not permitted to speak
20 his mind to the Court at age nine but I fully
21 understand the discretion of the judge.

22 In my child's specific circumstance I don't
23 wish him to miss school; I don't wish him to miss other
24 opportunities but it would be in his best interests to
25 speak just to be able to provide what his views are.

1 If he wants to speak on any topics or other party would
2 like to cross examine him on specifics, I will just
3 state I don't think that is necessary and I would
4 request the subpoena, if they are opposing it, simply
5 be restricted to him being allowed to speak rather than
6 being cross examined by either party.

7 THE COURT: Sure. All right. Thank you. In
8 these kind of cases the Court certainly has the
9 opportunity under the appropriate circumstances to
10 speak with a child or children who are the subject of
11 custody proceedings. Personally, I have done that
12 very, very rarely over the course of my time here on
13 the Court. And the reason is I believe that it is more
14 harmful to the child to be placed in the middle of this
15 conflict, and this is, to be sure, a very contentious
16 custody matter and it has been since I have first come
17 on to the case. I find that it is more harmful to the
18 child to be placed in the middle and as Mr. Barry I
19 think said well, that he may say one thing to one
20 parent that he is afraid to say to the other. And I
21 think it is more harmful than it is beneficial to hear
22 what the child has to say. There are other ways to
23 obtain that.

24 And in this instance, given the high level of
25 antagonism between the parties, I am going to exercise

1 my discretion and decline to interview Owen in this
2 case, at least at this time as part of this motion.

3 MR. BARRY: I would like to motion to
4 reconsider on some grounds here that I --

5 THE COURT: You just argued.

6 MR. BARRY: Well, you just ruled. So in terms
7 of you have made the statement you, yourself, you in
8 the past have under good cause ordered psychological
9 evaluation or essentially an interview through those
10 means, I would like to motion that Dr. Seibert here for
11 the Circuit Court simply be the one who interviews my
12 son. He has made a recommendation in the past to
13 interview my ex wife based on her repeated statements
14 based on her statements that she is in emotional
15 distress or has problems or is seeking therapy herself,
16 that I would like a motion to reconsider that there be
17 a home study in the other case. I think these are some
18 of those routes that you mentioned that the child's
19 circumstances, which is tantamount to custody
20 reevaluation be sought here.

21 THE COURT: I'm going to deny that now. If
22 you want to file something in the future --

23 MR. BARRY: I will.

24 THE COURT: We are here to deal with that.
25 That motion directly addressed this proceeding. So I

1 had to rule on that. So I'm going to grant the motion
2 to quash the subpoena for Owen.

3 MR. BARRY: Okay. And I would just like --

4 THE COURT: Whoa. Sir, you are going to have
5 to wait. I need to do this in a deliberate, organized
6 process. We don't do things this catch as catch can.

7 MR. BARRY: All right.

8 THE COURT: The other motion that is pending
9 and is not really related to the hearing today is Mr.
10 Barry's motion to correct appearance of counsel. You
11 are going to have to --

12 MR. BARRY: Can I speak on this one?

13 THE COURT: Explain what that is?

14 MR. BARRY: Well, I think it is very plain
15 here. When you put your signature to paper and certify
16 you have done something, the thing that is certified
17 should have been the thing you have done. That is not
18 the case here. And I have evidence to that and I think
19 in the legal strategy of Mr. Gallagher, I can't amount
20 what he may have been attempting to do, if it wasn't
21 strategy behind certifying, he sent something on
22 December and made an appearance on December 8th and
23 then withheld any appearance or mailings until
24 January 8th.

25 THE COURT: Hold on. Let me catch up with you

1 to make sure I'm following what you are saying.

2 MR. BARRY: Sure. There are exhibits with it.

3 THE COURT: Okay. Let me look at the record.

4 MR. BARRY: I'd like to enter into the record

5 --

6 THE COURT: Hold on. You got to do it slowly.

7 MR. BARRY: I will try.

8 THE COURT: Let me pick up.

9 MR. GALLAGHER: I believe the entry of
10 appearance Mr. Barry is talking about is on January 8th
11 of this year.

12 THE COURT: January 8th. I misheard him. All
13 right. All right. I see that Mr. Gallagher entered
14 his appearance on January 8th of 2025. What papers or
15 pleadings do you believe should have been sent to you
16 that were not sent to you?

17 MR. BARRY: I would just like to point out the
18 certificate of service itself, if you read it.

19 THE COURT: It says copy of the foregoing
20 entry of appearance was filed via MDEC and mailed first
21 class to Mr. Barry at 3502 East Pratt Street. You are
22 saying you did not receive that?

23 MR. BARRY: I believe there is a date that you
24 are omitting.

25 THE COURT: It says the 8th day of December.

1 MR. BARRY: Okay. Now I'm hearing it. Well,
2 in terms of mistake or otherwise I would just like to
3 let it be noted here that that was simply a request to
4 correct if it was a mistake the entry of appearance or
5 otherwise the certificate of service. However, I think
6 against Mr. Hunter's favor about his motives, he made
7 no defense or opposition along those lines. It was
8 simply a mistake.

9 THE COURT: Let me ask you this question. Did
10 you receive a copy of the entry of appearance --

11 MR. BARRY: Not in terms --

12 THE COURT: Listen to me. Let me finish.

13 MR. BARRY: All right.

14 THE COURT: Did you receive a copy of it
15 shortly after January 8th of 2025?

16 MR. BARRY: I just -- to not move forward
17 continually interrupting you, sir, if you have a hand
18 signal or something if you are going to be long of
19 thought to --

20 THE COURT: I appreciate that.

21 MR. BARRY: I'm trying. In terms of receipt,
22 Hunter e-mailed me on the 7th --

23 THE COURT: Mr. Gallagher.

24 MR. BARRY: Sure. And the Plaintiff's counsel
25 on the 8th filed by MDEC. So I believe the entry was

1 put into MDEC on the 8th of January.

2 THE COURT: Right.

3 MR. BARRY: Not December.

4 THE COURT: Uh-hum.

5 MR. BARRY: However, the certificate of
6 service, again, I will state, clearly states
7 December 8th.

8 THE COURT: Okay. Let me go back to my
9 question.

10 MR. BARRY: I have not made --

11 THE COURT: Let me go back to the question.
12 Sir, did you get a copy of it after January 8th?

13 MR. BARRY: After January 8th.

14 THE COURT: Yes. What then is the prejudice
15 that you claim as a result of that?

16 MR. BARRY: There is simple action of if I
17 were to make a certifying statement that I had done
18 something on December 8th, it would be a statement of
19 honestly, that I had done something on December 8th.

20 THE COURT: If I believe that this was an
21 intentional effort to deceive, perhaps you are right.
22 But it seems pretty obvious to me during the changeover
23 from 2024 to 2025 that this was a simple error and
24 without any prejudice to Mr. Barry.

25 MR. BARRY: Well, if the year were simply to

1 change from '24 to '25 and it were January to January,
2 that may make sense, but this a month rollover. So it
3 would have potentially say January '24, if they got the
4 year wrong, but it said instead December '24.

5 THE COURT: Mr. Barry, I am going to have to
6 cut you off at times.

7 MR. BARRY: I understand. I will leave it at
8 that. Counsel could not --

9 THE COURT: Sir, please don't speak over me.
10 Please. We do have to move on and there are times that
11 I may have to cut you off. I have heard you fully on
12 this. There is no prejudice to you. I'm going to deny
13 the motion to correct appearance of counsel. All
14 right.

15 There are more substantive things we need to
16 deal with.

17 MR. BARRY: I understand.

18 THE COURT: I'm going to hold off on the
19 Plaintiff's motion for attorneys fees. That is the
20 other one that is open. I will consider that at the
21 end of the case.

22 Sir, that leaves us or brings us to the real
23 substantive motion that is before the Court, and that
24 is Mr. Barry's motion to modify custody. Custody was
25 determined on an -- to the extent it is ever permanent,

1 but semi permanent basis by the Court's Judgment of
2 Absolute Divorce of January 12th of 2022 and the
3 custody provisions dealing with the parties' minor
4 child Owen, who is now age nine, were that the parties
5 would have shared physical custody, Owen would reside
6 primarily with his mother, Miss Schwender, during the
7 school year. Mr. Barry, Owen's father, would have Owen
8 on alternating weekends from Friday to Sunday; every
9 third weekend he would have him from 10:00 a.m. to
10 5:00 p.m. on Saturday, and every Wednesday after school
11 visit until 7:00 p.m.. During the summer, Mr. Barry
12 would have six weeks that are divided by three non
13 consecutive two week periods. In addition, the Court
14 has twice approved Mr. Barry's request to take Owen on
15 a winter vacation, a winter break for a 10 day period
16 during January and February, and that has been on each
17 occasion without opposition from Miss Schwender. I did
18 make some adjustment last year by shifting one of the
19 summer weeks of vacation to Miss Schwender. I have not
20 done so this year.

21 The parties alternate holidays between
22 themselves. That is the custody order that is in
23 place.

24 So that you understand, Mr. Barry, what the
25 standard is that you have to meet, it is really

1 two-fold: One, the first standard is you must
2 demonstrate that there is a material change in
3 circumstances from the time that order was entered that
4 would require the Court to reconsider custody. And
5 then and only then do we get into the circumstance of
6 finding what is in the best interests of Owen. Okay?
7 Is that helpful to you?

8 MR. BARRY: Well, I think I have established
9 that. The petition states very clearly --

10 THE COURT: I want you to understand what the
11 standard is.

12 MR. BARRY: Thank you.

13 THE COURT: All right. So with that, and it
14 is your burden to produce evidence by preponderance of
15 the evidence that those conditions are met.

16 MR. BARRY: Okay. Wonderful. I will just
17 take it that the motion on essentially a shadow day at
18 a private school that was the other pending motion held
19 sub curia, we can come to a frame of --

20 THE COURT: That will be part of this because
21 as I understand it, it was preliminary to your request
22 to move him to Baltimore City.

23 MR. BARRY: In case we did not get to hearing
24 so he would not lose opportunity to have a seat at
25 Saint Kasimir's, which he has one held, that motion

1 could be addressed by them if they chose.

2 THE COURT: I will incorporate -- I'm going to
3 say if there is no material change in circumstances --

4 MR. BARRY: The material changes, first and
5 foremost --

6 THE COURT: Let me make sure the record is
7 right. You are going to testify on this issue,
8 correct?

9 MR. BARRY: Well, I intend to testify and I do
10 believe I know the motion to quash was --

11 THE COURT: Denied.

12 MR. BARRY: Of course. I don't think so. I
13 think the motion to quash, I hope it was denied.

14 THE COURT: Yes, I denied it.

15 MR. BARRY: The motion to quash or my
16 subpoena?

17 THE COURT: I apologize. You are correct. I
18 granted -- you are correct. I granted the motion to
19 quash.

20 MR. BARRY: Again, in terms of your
21 discretion, I do think that is fair because there is
22 preponderance of evidence that the circumstantial
23 changes to Owen's life --

24 THE COURT: Okay. Are you testifying now?
25 Because if so, you need to raise your hand and be sworn

1 in.

2 MR. BARRY: In terms of doing an affidavit
3 that I swear to tell the truth, whole truth and nothing
4 but the truth, I'm ready to do that.

5 THE COURT: Very good. Swear him in.

6 (WHEREUPON, the clerk administered the oath.)

7 MR. BARRY: I affirm under the penalty of
8 perjury that I'm making statements that are the truth,
9 the whole truth and nothing but the truth. This is my
10 belief.

11 THE COURT: Good enough for me. Thank you.
12 Bring whatever you want to use to testify up to the
13 witness stand and testify from there, please. Just
14 makes it better. I'm sure you are going to be asked
15 questions. It makes it better --

16 MR. BARRY: Give me one or two --

17 THE COURT: Sure. If at some point you need
18 to retrieve a document, you can do that. That is not a
19 problem.

20 MR. BARRY: All right. I don't want to be
21 complicated with this. The order doesn't necessarily
22 matter but I do have some things to hand some parties.

23 THE COURT: You are good. So Mr. Gallagher,
24 if Mr. Barry has a document that he wants to discuss,
25 please go up to the witness box and retrieve it from

1 him when he offers it to you.

2 MR. GALLAGHER: Thank you, Judge.

3 THE COURT: Very good.

4 MR. BARRY: Thanks. That will keep everything
5 on pace.

6 THE COURT: Good. Let the record reflect Mr.
7 Barry is organizing his documents to make it easier for
8 him to testify. If you can take the stand. Mr. Barry
9 is in the witness box at this time.

10 THE WITNESS: Sure.

11 THE COURT: Mr. Barry, what would you like to
12 tell me to share that there had been a material change
13 of circumstances since the Court's prior order?

14 THE WITNESS: The first material changes, Owen
15 and I have changed residences since the last time
16 custody was addressed. So we were living at 4314 East
17 Lombard Street where Owen had a room and I had a room
18 and since then we have moved into 3502 East Pratt
19 Street where we have resided for the record quite
20 sometime now.

21 THE COURT: When did you make that move?

22 THE WITNESS: I have a text message record of
23 that. So I can send that precise detail.

24 THE COURT: Do you remember generally when you
25 moved?

1 THE WITNESS: Maybe a year and a half ago, to
2 make a permanent move. So essentially it was a slow
3 move where his bedroom was built out in our house and
4 it was made ready for him and then slowly over the
5 period of a couple months his bed and everything was
6 moved in as the property got sold and the lease was up,
7 things like that. Materially, we have --

8 THE COURT: Go ahead.

9 THE WITNESS: Materially we are now living in
10 a new property, so that is one change.

11 My understanding on information and belief is
12 my ex wife's work schedule has changed as well.

13 MR. GALLAGHER: Objection. Foundation.

14 THE COURT: Well, you can cross him on that.
15 This is what he is saying. Tell me --

16 THE WITNESS: Sure. I mean, I speak to my son
17 every single night. So he will talk to me and tell me
18 when his mother leaves or text me that she has left and
19 --

20 THE COURT: -- what you understand her work
21 schedule to be?

22 THE WITNESS: She has refused all -- I believe
23 it is part of the JAD -- in terms of my request for a
24 schedule that it is in there, I have a right to know
25 essentially what is being done with my son, who he is

1 being left with, his activities. I have never once
2 received a calendar schedule or answers from my ex wife
3 except to essentially pound sand, if I can quote her,
4 in complete and you utter contempt of the JAD.

5 THE COURT: So you are saying you have not
6 received her work schedule?

7 THE WITNESS: She refuses both her schedule
8 and Owen's schedule. So I have no breakdown of what
9 Owen's activities are there. I have a strong
10 understanding from being so close with my son in
11 communication was my son daily, even despite the
12 physical separation, so he expresses that he has been
13 left more --

14 MR. GALLAGHER: Objection.

15 THE COURT: Overruled. I want --

16 A. He expresses to me. I think that is fair. I
17 would like to understand what the objection is.

18 THE COURT: It is probably hearsay. But that
19 is okay. Just go and tell me.

20 THE WITNESS: Okay. I mean, he expresses to
21 me, I will give an example of majority of Wednesday
22 nights and I will just take it back to December since
23 the filing period. Every instance per the JAD I will
24 pick him up after school and in fact I volunteer at
25 Warren Elementary School, so I will go there after

1 school and voluntary with the club that he participates
2 in.

3 THE COURT: What club is that?

4 THE WITNESS: This is a new semester for this.
5 Last year there was a Pokemon club that started where
6 he plays cards and I volunteer there with one with of
7 his other friend's father's and we run the Pokemon
8 club. This semester he is helping as a trainer since
9 it is something we enjoy together; he is teaching
10 younger kids how to play. And that is something we do
11 together every Wednesday.

12 Here is where our Wednesdays go from here,
13 however. After Pokemon club I will return him home to
14 my residence. You know, week on, week off his
15 stepsister, I will start with the frame of that term
16 and get into it, but if you ask my son, you know, does
17 he have a stepsister, he would understand what that
18 term means with no blood relation but that me and my
19 fiancée are getting married and her daughter --

20 MR. GALLAGHER: Objection, Judge.

21 THE COURT: Excuse me. There is an objection.
22 What is the objection?

23 MR. GALLAGHER: Regarding what the child
24 believes. Speculation.

25 THE COURT: Overruled.

1 THE WITNESS: Sure. They are very close. See
2 each other as brother and sister and per the JAD --

3 THE COURT: What is her name?

4 THE WITNESS: Lennon Humes.

5 THE COURT: Okay.

6 THE WITNESS: As much as possible I have tried
7 to restrict some information about Ashley and her
8 children due to my ex wife.

9 THE COURT: This is your partner?

10 PROSPECTIVE JUROR: This is my step daughter.
11 I will be essentially claiming her as a dependent this
12 year on my taxes.

13 THE COURT: Okay. I'm trying to find --
14 determine the relationship. That is all.

15 THE WITNESS: Okay. Yup. So on Wednesday, so
16 you know, there is just base 50/50 custody with the
17 other child in the house. So since even the beginning
18 of the JAD and since before, that child has been on a
19 week on, week off in our household where I am head of
20 household and that is to say when she is there on a
21 Wednesday, Owen will come in the door and the kids will
22 be so excited to see each other, they will run and play
23 and frolic and then by 7:00 p.m. Owen is having to get
24 his shoes on because his mother is demanding that he be
25 foot in the door at 7:00 p.m. and you know, shortly

1 thereafter I will drop him off and then my son will
2 text me, maybe not 30 minutes later my mother has left.
3 She has left and --

4 MR. GALLAGHER: Objection. Just for sake of
5 efficiency, I would like to have a standing objection
6 with respect to any of the statements the child has
7 made.

8 THE WITNESS: Well, I have text evidence.

9 THE COURT: Understood. Here is -- Mr. Barry,
10 so you understand, the nature of the objection I'm sure
11 is hearsay, correct?

12 MR. BARRY: Thank you, Your Honor.

13 THE COURT: Okay. Technically, what Owen
14 tells you is not something you can relate because he is
15 not here to say it himself and can't be asked about it.
16 However, given my ruling earlier, I'm going to overrule
17 that objection and permit you to tell me. I'm going to
18 put that in context because it is coming from you and
19 not from him, but nevertheless, I don't want to stifle
20 what you are trying to tell me. Okay?

21 THE WITNESS: Certainly. And I will just
22 state here that I'm only bringing things forward that I
23 know I can provably evidence outside of something my
24 son has said. So text records are something that even
25 if it is a text from him, that is still a simple

1 evidence record that he has stated something and even
2 just claim me I text back and forth with my ex wife,
3 although she has not provided me her work schedule,
4 would seem to indicate she has left the house by
5 7:00 p.m. and this on my son's expression to be home by
6 7:00 a.m.. These things hopefully cross-examination
7 testimony I will have an opportunity to ask some
8 details.

9 THE COURT: Okay. Go ahead. Tell me what
10 else you want to tell me. You were telling me about
11 the relationship between Owen and Lennon and I have got
12 that. What else?

13 THE WITNESS: Hopefully I have established
14 that there is circumstantial change which is simply the
15 change of residency. But I do aver that it goes
16 further than that with my son.

17 THE COURT: All right. What is different
18 about the two residences?

19 THE WITNESS: What is different about the two
20 residences in terms of where we have moved or between
21 --

22 THE COURT: How does it affect Owen?

23 THE WITNESS: It improves his life immensely.

24 THE COURT: How so?

25 THE WITNESS: He now has access to a party in

1 the house that is close to his age that he can play
2 with while home. He has essentially better room
3 amenities. So he has a full bathroom. He has
4 essentially like a single college dorm suite in the
5 house. He has a wonderful room. I would love to show
6 a picture of it. I'm proud of what I have been able to
7 do for my son. And in addition to that, I mean the
8 home runs efficiently. There is two parents in it
9 full-time. Me, I believe your prior ruling said
10 something along the lines I was an 80-hour a week
11 worker. So just say that was true at one point in my
12 life. I now have a long and termed time record of what
13 I actually work.

14 THE COURT: How often do you work now?

15 THE WITNESS: Well, I work full-time but I
16 work from the house and I work with full flexibility.
17 I work probably between a 41 and 42-hour workweek on
18 average. Okay. But with full flexibility. Every
19 single day that Lennon is in the house I pick her up
20 and drop her off from school. I go with the mother, of
21 course. So Ashley and I essentially are linked at the
22 hip for probably the entire day. She is stay at home
23 now taking predominantly care of the house and the
24 children when they are home and in and out of the house
25 for their base care. In Owen's circumstance, it is a

1 lot of me being the primary care simply because in his
2 circumstance I have him so little, I truly enjoy taking
3 care of all of the things that he needs. And in fact
4 he does need them desperately. So --

5 THE COURT: So you work from home completely?

6 THE WITNESS: Completely. I am full-time
7 remote and I have been since my employment at Lockheed
8 Martin and that is not changing with return to work
9 schedules.

10 THE COURT: Still employed at --

11 THE WITNESS: I'm a staff engineer and a lot
12 of systems I maintain are in remote data centers. So
13 that --

14 THE COURT: Still at Lockheed?

15 THE WITNESS: And I will continue. I'm a
16 staff engineer at Lockheed Martin.

17 THE COURT: All right. What else do you want
18 to tell me?

19 THE WITNESS: Well, in terms of that, with the
20 work flexibility in the past and even in rulings, I
21 believe your judgment in 2022 stated something along
22 the lines of I would be unable to get home and to and
23 from school. That seems to have evaporated with easy
24 rulings that I have dropped him off to school on
25 returns from holidays or picked him up from school. I

1 will even aver that from the period of extreme
2 contempt, essentially the night you made your ruling,
3 Judge, my ex wife and I had a sidebar. She was
4 unwilling to come back to court to agree to my
5 modification request at the time for some flexibility,
6 like change of some days to fit a work schedule,
7 modification of things, addition of winter holiday at
8 the time which would have saved the Court a lot of
9 time. This was essentially then agreed to in contempt
10 so long as I wouldn't come back to court.

11 So from the day of the decree my ex wife
12 essentially, after bringing her Court case here, threw
13 your papers out the window and then started operating
14 on a more loose schedule and that continued until she
15 got very angry in October of last year.

16 THE COURT: Okay.

17 THE WITNESS: Well, October of 2024.

18 THE COURT: I don't understand what you are
19 telling me there.

20 THE WITNESS: So you outlined the JAD and this
21 was something that was admitted to I believe in --
22 well, I have multiple text evidence here, but also in
23 the hearing for winter vacation that we weren't
24 following the JAD. And we were not following the JAD
25 from the minute it was written and we were not

1 following the JAD with any intent for that. There were
2 some years that made absolute no sense to follow. You
3 know, I think some of that would have been very nice if
4 the other party could have continued or at least from
5 the start tried to accommodate some of those things,
6 like winter vacation.

7 But she intended to slowly hold the control
8 and essentially use the JAD as a threat just like she
9 under threat while we were working together for an
10 amicable separation that would have given my son the
11 50/50 custody arrangement that my step daughter, future
12 step daughter has had and will continue to have with
13 her mother and her father. You know, the hamstring
14 that at that time and then putting the situation into
15 contempt, the correction of contempt at her whim
16 doesn't fix the essence that it is not in Owen's
17 interests to have his schedules pulled around. It is
18 not in Owen's best interests to be in full-term care of
19 a parent that is not able to work with the other party.
20 I have some evidence here also to the fraud of the
21 mother per Owen's schooling and I would like to hand
22 out some pieces of evidence here just to speak.

23 THE COURT: You can introduce anything you
24 would like.

25 MR. BARRY: Okay. Just pass this over.

1 THE COURT: Just hand it over to the clerk.
2 She has to docket it.

3 MR. BARRY: That is the full stack. This one
4 --

5 THE COURT: We're going to mark that as the
6 Defendant's Exhibit Number 1.

7 (WHEREUPON, the Above Referred to Document Was
8 Marked For Identification As Defendant's
9 Exhibit Number 1.)

10 THE COURT: Can you describe it for the
11 record, Mr. Barry? What is Defendant's Exhibit
12 Number 1.

13 THE WITNESS: Just to enter for the record, my
14 Defendant's Exhibit Number 1 here is a student
15 information record for Owen Jeffrey Barry.

16 THE COURT: So it is Owen's student records
17 and that is from Warren Elementary?

18 THE WITNESS: Correct.

19 THE COURT: Okay. What is the purpose for
20 which you are offering those?

21 THE WITNESS: Well, I would like to establish
22 a residency fraud. I would like to establish here
23 through evidence that my ex wife knowingly has enrolled
24 my son outside of his proper zoned school and in fact
25 in evidence and record when I brought this to her with

1 the zone change of school that occurred last year, she,
2 again, you know, has maintained to me that she lives
3 across two different addresses and that Owen resides
4 across two or multiple addresses. I have never known
5 this to be the case, but when she makes a statement
6 about herself that she is living between addresses, and
7 my son says that she is not home overnights, I don't
8 know what her schedule is. She refuses to provide
9 that.

10 THE COURT: Excuse me for a second. Any
11 objection, Mr. Gallagher, to Defense Exhibit Number 1?

12 MR. GALLAGHER: I would like to see which one
13 it is. There are --

14 THE COURT: I'm sorry. It is -- this one is
15 dated April 5th of 2024. Excuse me. It has got --

16 THE WITNESS: It is reflective of --

17 THE COURT: Any objection to it?

18 MR. GALLAGHER: Just a moment to look at it.

19 THE COURT: Go right ahead.

20 MR. GALLAGHER: I have never seen these
21 before.

22 THE COURT: Go right ahead.

23 MR. GALLAGHER: I'm going to object for
24 reasons of foundation. I don't know where this
25 document came from.

1 THE COURT: So you object to it's
2 authenticity?

3 MR. GALLAGHER: Yes, thank you.

4 THE COURT: I'm going to overrule that. I
5 will take it for what it purports to be.

6 MR. GALLAGHER: Thank you.

7 THE COURT: All right. Defense Exhibit
8 Number 1 is admitted.

9 (WHEREUPON, the above referred to document was
10 entered in evidence as Defendant's Exhibit
11 Number 1.)

12 MR. BARRY: Great. I will just say that this
13 student record, you know, it shows -- it shows just for
14 an auxiliary because it does matter to some of these
15 cases because on Page 2 of this, you can kind of see
16 the trip dates. Owen's winter vacation trip has been
17 consistent through the years but his days absent have
18 been getting much, much less, understandably him being
19 absent 20 days about the year and in the timeframe of
20 the divorce finalization.

21 THE COURT: Yup.

22 THE WITNESS: So just to note there for
23 whatever impact. And he is fully prepared for the trip
24 this year.

25 THE COURT: Good.

1 THE WITNESS: I would like to also point to
2 the address line here for student address and parent
3 guardian information where it states 24 Pickburn Court.

4 THE COURT: Okay. I note that.

5 THE WITNESS: And next, I would like to also
6 have supporting evidence here enter this Baltimore
7 County shared domicile disclosure for 2024, 2025, this
8 document was not obtained from the school. You can see
9 it is scratched out. This was texted to me from Amy on
10 my request.

11 THE COURT: You got this from Miss Schwender

12 --

13 THE WITNESS: From Miss Schwender.

14 THE COURT: Show it to Mr. Gallagher. All
15 right. Any objection to this? It is one of five.

16 MR. GALLAGHER: No objection. Thank you.

17 THE COURT: All right. Defense Exhibit
18 Number 2 is admitted. And it is a shared domicile
19 disclosure renewal form for the 24/25 year issued by
20 Baltimore County public schools and filled out by hand.

21 (WHEREUPON, the above referred to document was
22 entered in evidence as Defendant's Exhibit
23 Number 2.)

24 MR. BARRY: For this piece of evidence here,
25 on the shared domicile disclosure form, I would like to

1 point out I don't know who signed this. I assume like
2 the bottom box there says the homeowner/lease owner,
3 Miss Schwender or her father and I assume her as well
4 have signed this form.

5 THE COURT: Okay. Go ahead.

6 THE WITNESS: I would like to note that the
7 current address listed is 24 Pickburn Court. Owen's
8 address that he sleeps head on pillow, which I believe
9 is the measure of where you live in terms of a primary
10 residency for this as far as have I ever seen is not 24
11 Pickburn Court.

12 Also would like to point out --

13 THE COURT: Where is he as far as you
14 understand?

15 THE WITNESS: Owen's address as far as I
16 understand has been static while he is with his mother.
17 He lives at his grandmother's, Cathy Schwender's, at 29
18 Spring Glen. So current proof of domicile, I will also
19 note that Number 2 states child support administration
20 envelope. So whatever child support she is receiving
21 is registered at an address that the child doesn't live
22 at.

23 THE COURT: Okay.

24 MR. GALLAGHER: Judge, I'm going to renew --
25 well, I did not object previously but then the

1 testimony from the witness, I don't know who signed
2 this form.

3 THE WITNESS: It is blocked.

4 THE COURT: That is all right -- you don't
5 have to chime in, Mr. Barry.

6 MR. GALLAGHER: In other words, I'm objecting
7 based on laying a foundation.

8 THE COURT: I'm going to let it in for what it
9 is worth.

10 MR. GALLAGHER: Thank you, Judge.

11 THE COURT: Thank you. What else do you want
12 to tell me, Mr. Barry?

13 THE WITNESS: Wonderful. I -- in terms of
14 establishing that I have now a series of text messages.
15 This was the best way I could concisely put them in so
16 they can be read. If the Court really wants me to
17 print them out one to a page.

18 THE COURT: That is all right. Who are the
19 text messages to and from?

20 THE WITNESS: These are text messages, a
21 complete conversation that occurred on June 13th
22 between Miss Schwender and myself.

23 THE COURT: June 13th of what year?

24 THE WITNESS: All right. Let's see here. It
25 would be June 13th of last year.

1 THE COURT: 2024.

2 THE WITNESS: Yes. So the prior --

3 THE COURT: All of these are between you and
4 Miss Schwender?

5 THE WITNESS: Correct.

6 THE COURT: And who is speaking in the blue?
7 Who is speaking in the black?

8 THE WITNESS: I am speaking in the blue. So
9 the conversation starts out with the request from Miss
10 Schwender and what with this piece of evidence, I would
11 like to establish that -- with regard to my son's
12 friendships and his relationships with his peers, my
13 ex-wife is not the proper caregiver for Owen and the
14 reasons I have and the belief I have stem from
15 incidents like this. So my ex wife will often get into
16 arguments with other parents on the playground, some of
17 Owen's peers and friends --

18 MR. GALLAGHER: Objection.

19 THE COURT: Sustained.

20 THE WITNESS: With the result of those, many
21 of his friends' parents have come to me and some of
22 them have offered to provide testimony about
23 essentially --

24 THE COURT: Will they be testifying here
25 today?

1 THE WITNESS: They are not. I don't want to
2 extend that out to them actually.

3 THE COURT: Listen to me.

4 THE WITNESS: I will retract that.

5 THE COURT: So you can't tell me what they
6 told you.

7 THE WITNESS: I will retract that.

8 THE COURT: Let me ask you about the text
9 messages. So if you are telling me that the message
10 that is in black comes from Miss Schwender --

11 THE WITNESS: Correct.

12 THE COURT: -- I'm looking at the first one in
13 the upper left hand corner.

14 THE WITNESS: Yes.

15 THE COURT: She refers to a friendship between
16 Owen and a particular girl. Who is the girl to your
17 understanding that Miss Schwender is referring to?

18 THE WITNESS: With regard to children, I don't
19 know if I should just use an initial or not.

20 THE COURT: You have to -- is she a girl at
21 school?

22 THE WITNESS: She is a little girl in his
23 grade.

24 THE COURT: At Warren Elementary?

25 THE WITNESS: Yes. And over time and through

1 schooling Owen is friends with most of the children
2 across his grade.

3 THE COURT: Okay.

4 THE WITNESS: This would probably be his
5 friend that he spends the most time with. So if I'm
6 going to catch my son getting a call from a friend too
7 late at night, it might be this little girl. So they
8 are very close friends. That is not pushed or
9 initiated by anyone. But I'm using this as an example
10 of how my ex wife treats his very close friends. What
11 I brought up with the parent is the little girl's
12 friends are very concerned a lot of the behaviors --

13 THE COURT: You can't tell me what they have
14 told you.

15 THE WITNESS: Hearsay. I understand that.
16 This is direct evidence. I will just read the text in
17 terms of the first one, down through the conversation
18 because I think this conversation is prescient and it
19 is on topic for Owen's education and --

20 THE COURT: If you want to point me to which
21 of those. I can read them probably quicker than you
22 can recite them.

23 THE WITNESS: Just number 1.

24 THE COURT: I have read that.

25 THE WITNESS: Well, with the actual text, this

1 is her base text to start the whole conversation. It
2 is a request to stop encouraging the friendship between
3 Owen and the girl.

4 THE COURT: Yup.

5 THE WITNESS: And then she makes comments
6 about what the girl does to Owen that I don't think
7 need to be read.

8 THE COURT: I read it.

9 THE WITNESS: But she makes a statement here
10 that the girl is a problem because everything gets
11 swept under the rug because of her IEP. So this is one
12 example of a girl that has an IEP. I know there are
13 probably others at this school and throughout the
14 Baltimore County school system.

15 So just with this first text, my entry into
16 evidence, one fact I would like to establish is Saint
17 Kasimir's does not have any students with IEPs.

18 MR. GALLAGHER: First of all, I will object to
19 the client's response. I don't see where --

20 THE COURT: I will take it -- Mr. Barry,
21 please, when there is an objection, I need to rule on
22 it, not you.

23 THE WITNESS: All right. Not a conference.

24 THE COURT: It does say IEP at the end there.
25 I understood the point. I have read this. What else

1 do you want it tell me about this exhibit?

2 THE WITNESS: If you have read -- if you could
3 just characterize then text one through eight and then
4 I will give you just kind of what you think is, in
5 essence, not to read every single one of these.

6 THE COURT: Okay. All right. I have read the
7 e-mails.

8 THE WITNESS: On the first one, maybe you can
9 just semi agree or disagree without making --

10 THE COURT: I don't agree or disagree. I have
11 read it. What else do you want to tell me?

12 THE WITNESS: Just to highlight in text number
13 five, I asked if she is living at 29 Spring Glen Court
14 and then, you know, through the remainder of this
15 conversation here, if you will flip over to the back
16 page, you can see expressly in text number eleven her
17 eventual response that she says she lives at 24
18 Pickburn Court. Owen lives at 24 Pickburn Court. It
19 says that on everything she owns. And then she even
20 states how frustrating it is I keep asking this
21 question. She laughs in text number 13 with an LOL and
22 says life is complicates and another text response.
23 She also makes a statement in text number 12 that it is
24 called picking up the pieces after a failed marriage.
25 She in text number 12 also states that Owen lives

1 between multiple houses and tells me that I have always
2 said that, I being Amy Schwender or Miss Schwender in
3 this instance. In text number 10, she states
4 expressly, I don't live in that district, I don't live
5 in Mays Chapel zone. At the time of these text
6 messages, I would also like to attest, Owen did live in
7 the Mays Chapel zone. He hadn't changed residences and
8 in fact Mays Chapel did not rezone as a result of the
9 rezoning, and simply stayed zoned for Mays Chapel,
10 Owen's actual residence.

11 THE COURT: Okay.

12 THE WITNESS: Just -- it is in there. If
13 there is another question?

14 THE COURT: I have read them.

15 THE WITNESS: So I think from here now --

16 THE COURT: This is another exhibit?

17 THE WITNESS: Yes. I would like to enter into
18 evidence. This just related to essentially the
19 schooling and his enrollment here.

20 THE COURT: This is Defendant's Exhibit
21 Number 4. And what is it, sir?

22 THE WITNESS: It is Baltimore County public
23 school application for special permission for transfer,
24 K-12. And it is two documents stapled together. They
25 are linked. The student contract for special

1 permission trip.

2 THE COURT: Okay.

3 MR. GALLAGHER: Judge, just for housekeeping,
4 Defendant's Exhibit Number 3 has only been marked for
5 Identification.

6 THE COURT: Thank you.

7 MR. GALLAGHER: My only objection to it are
8 the statements from the teacher present in the text
9 messages.

10 THE COURT: I will admit it other than any
11 statements from teachers recited there.

12 MR. GALLAGHER: Thank you.

13 THE COURT: It is a communication between the
14 parties and comes in as admission of a party opponent.
15 So that has been admitted. Defendant's 4 is, Mr.
16 Barry, you made this application; is that correct?

17 THE WITNESS: Well, yes.

18 THE COURT: And that was on January 9th of
19 this year?

20 MR. BARRY: Correct.

21 THE COURT: Okay. What is the purpose for
22 which you are offering this?

23 THE WITNESS: Well, the purpose of this is so
24 -- so with the zone change, per Maryland Code and rule
25 and per full notice of Miss Schwender per that text

1 conversation that wasn't even the first text
2 conversation about his proper zoned school enrollment.
3 This is essentially a document -- I'm asking the Court
4 here for an instant motion as it can be appropriate to
5 give me the authority to have my son sign this to
6 protect his enrollment at Warren elementary.

7 Referencing --

8 THE COURT: Is there any question that he is
9 not going to go to Warren Elementary?

10 THE WITNESS: Yes. He is fraudulently
11 enrolled there. So if you will reference --

12 THE COURT: Have Baltimore County schools ever
13 raised that issue?

14 THE WITNESS: The issue is he is
15 fraudulently --

16 THE COURT: Listen to my question. Have the
17 schools ever raised that issue?

18 THE WITNESS: Absolutely --

19 THE COURT: Threatened to remove him?

20 THE WITNESS: The form right here states --

21 THE COURT: Sir, listen to my question. To
22 your knowledge has the school system ever raised the
23 issue and threatened to remove Owen from Warren
24 elementary?

25 THE WITNESS: To my knowledge the Maryland

1 Code states expressly --

2 THE COURT: You are not helping yourself if
3 you can't answer the question.

4 THE WITNESS: I can answer the question if it
5 is asked properly. The school itself or are you asking
6 has anyone brought the --

7 THE COURT: Has the County done anything?

8 THE WITNESS: I brought the issue to the
9 County. So the County has taken up an initiative on
10 this.

11 THE COURT: What have they done?

12 THE WITNESS: They have helped me with the
13 proper paperwork to file this exemption because this is
14 the appropriate legal, lawful, statuted matter here for
15 Baltimore County public schools for an exemption. My
16 son does not qualify for a terminal year exemption when
17 there is a redistricting. If he were in fifth grade,
18 this would not be an issue. But since he is not in
19 fifth grade --

20 THE COURT: I'm going to admit this for
21 whatever is it worth. Has this been filed?

22 THE WITNESS: In terms of filed, it has been
23 handed in. What I'm asking in --

24 THE COURT: Handed in to whom?

25 THE WITNESS: To the principal of the school

1 for this.

2 THE COURT: So it has been filed and leave it
3 at that.

4 THE WITNESS: Filed means signed here by my
5 son. I brought this here as a father that doesn't have
6 the legal custody right that I'm attempting to regain
7 for some of these purposes. My son to remain at that
8 school per the actual County school board regs would
9 just simply require his signature on this.

10 THE COURT: What good do you believe this
11 would do for Owen?

12 THE WITNESS: Well, it is the same as
13 following a judicial decree.

14 THE COURT: No, sir.

15 MR. BARRY: Same as --

16 THE COURT: Different question. Listen to my
17 question. I'm making the decision. You need to
18 persuade me. My question is what good would it do to
19 have Owen leave Warren Elementary?

20 THE WITNESS: That is not what this form is.
21 This is a special permission transfer for him to stay
22 at Warren Elementary. He is fraudulently enrolled at
23 Warren Elementary. He is at risk if the State would
24 like to investigate students outside their zoned
25 school, if he were picked up in one of those very easy

1 to perform searches where my ex wife and the child
2 doesn't live at the address my ex wife is stating, he
3 would be at risk to be removed from school within 15
4 days as the forms and the exhibits have stated.

5 THE COURT: I got it. Next -- move on. I got
6 your point. What else do you want to tell me?

7 THE WITNESS: The very next page. So the
8 special permission transfer for him to stay at Warren,
9 because during the zone transfer he was not in fifth
10 grade, so it wasn't a permanent year. Because he is in
11 fourth grade, very clearly stated per Rule 51-40 of the
12 superintendent and the school board policy he just
13 needs to sign this form. I'm submitting this to
14 evidence I'm the parent that is able to follow these
15 proper processes and procedures per just basic public
16 education for Owen and my ex wife fights me viciously
17 to the point of lying about her address, lying about
18 the circumstances of the child.

19 THE COURT: I understand your -- I understand
20 this point. What else do you want to tell me that is
21 in the next -- not about this issue. I understand this
22 issue. What else do you want to tell me besides the
23 status of Owen's registration with Warren Elementary
24 and Baltimore County school system.

25 THE WITNESS: I would like to put to the table

1 an instant motion for me to be permitted to have him
2 sign this.

3 THE COURT: The motion is denied. That is not
4 appropriate at this time.

5 MR. BARRY: I certainly hope for my son's
6 interest it comes back to legal custody matter for that
7 to be signed.

8 THE COURT: Okay. What else do you want to
9 tell me? Again, the issue here is what has changed
10 from January 2022?

11 MR. BARRY: Well, from January 2022, there was
12 a school redistricting in Baltimore County and the
13 other party has, as evidenced, failed to properly
14 enroll Owen in his zoned school.

15 THE COURT: Okay. What else has changed since
16 2022?

17 THE WITNESS: Going back to that or just with
18 this evidence? I'm submitting evidence here.

19 THE COURT: I have got Exhibit Number 4. If
20 there is something else to submit.

21 THE WITNESS: Well, yes. In terms of the list
22 of things just to reiterate here, I have stated our
23 addresses have changed. I have stated that there has
24 been a failure --

25 THE COURT: You don't have to recap. What

1 other evidence do you want to submit?

2 THE WITNESS: On the grounds of who is the
3 proper parent to facilitate the right actions for Owen
4 and interactions between the parents, I would like to
5 --

6 THE COURT: Understand I'm not at that point
7 yet. I have to find there has been a material change
8 of circumstances. That is the issue. And what do you
9 have to show that?

10 THE WITNESS: Again, if you look back at the
11 text messages, our residence has changed, so my
12 residence and my application for custody, my
13 circumstance has changed.

14 THE COURT: You made that point.

15 THE WITNESS: I have made that point. The
16 schooling circumstance for him, the school districts in
17 Baltimore County have rezoned. That is a change. The
18 change here is there is a failure to update and failure
19 to properly --

20 THE COURT: You have made that point.

21 THE WITNESS: The other change here and
22 evidenced in these text messages, if you will look at
23 text message that states --

24 THE COURT: This is Exhibit Number 3.

25 THE WITNESS: Exhibit 3 here -- where is the

1 -- there is no response from the Plaintiff, however, at
2 the time of these text messages, essentially my
3 understanding was she was working approximately three
4 nights a week.

5 THE COURT: Okay.

6 THE WITNESS: And she increased her overnights
7 from three nights a week to essentially more, so
8 essentially almost full-time and this is a significant
9 change.

10 THE COURT: I don't understand what you mean.

11 THE WITNESS: She started working more nights.
12 So my ex wife leaves the house and leaves Owen
13 overnight in someone else's care. So even with custody
14 -- essentially if you reversed and this is my real
15 thought here in some of the prejudice against me
16 specifically as a father, if you simply reverse the
17 gender rolls --

18 MR. GALLAGHER: Your Honor -- I want to let
19 the witness speak but --

20 THE COURT: Okay.

21 MR. GALLAGHER: -- I'm objecting with respect
22 to anything regarding my client, when she is working,
23 what her work schedule is, when she is there overnight,
24 what he says she is there overnight.

25 THE COURT: What is the basis?

1 MR. GALLAGHER: Lack of basis. He is
2 guessing. It is hearsay. And she --

3 THE COURT: Okay. That goes to the weight of
4 it. I understand exactly the point you are making.

5 MR. GALLAGHER: Thank you.

6 THE COURT: I'm going to permit him to tell me
7 that. So you believe she is working more overnights,
8 correct?

9 THE WITNESS: Well, I talk to my son. My son
10 knows when his mother leaves the house and per these
11 text messages she states she is living between
12 addresses. So that is an absolute change where at the
13 time of decree Amy Schwender did not make an odd claim
14 that she is living between addresses.

15 THE COURT: You made that point. I
16 understand. What else?

17 THE WITNESS: Well, in terms of me being the
18 right caretaker.

19 THE COURT: That is the second -- that is the
20 next phase of this. Again, the first question is what
21 has changed since January of 2022?

22 THE WITNESS: I understand that you are not
23 trying to stop me for a whole stop. You are trying to
24 organize the information.

25 THE COURT: That is exactly it.

1 THE WITNESS: All right. I have this exhibit
2 here which --

3 THE COURT: All right. What is that?

4 THE WITNESS: This is a text message.

5 THE COURT: Mark this as Defendant's Exhibit
6 Number 5.

7 THE WITNESS: If you mark this Number 5, this
8 one already has been filed with the -- with regard to
9 --

10 THE COURT: Filed it in connection with?

11 THE WITNESS: With the Saint Kasimir's. This
12 is a document for reference.

13 THE COURT: What is it?

14 THE WITNESS: This is text message that I
15 aver --

16 THE COURT: With whom?

17 THE WITNESS: With Miss Schwender. Where --
18 again, this is talking about the instance of custody
19 and renewed proceedings here.

20 THE COURT: Okay.

21 THE WITNESS: She essentially tells me that
22 she is reducing her hours and that reducing her hours
23 might lose my great paying full-time job.

24 THE COURT: Hold on a second. Mr. Gallagher,
25 have you had a chance to look at it?

1 MR. GALLAGHER: I'm almost done.

2 THE COURT: Take your time.

3 MR. GALLAGHER: My only objection is as to
4 time.

5 THE COURT: When was this conversation, Mr.
6 Barry?

7 THE WITNESS: It should be dated on the other
8 exhibit with Saint Kasimir's but it was a Wednesday
9 evening in the much more recent past. So this was a
10 Wednesday evening and not having a PC in front of me,
11 the exhibit filed essentially has a date. I have my
12 phone and text messages --

13 THE COURT: Do you have a general recollection
14 of when the conversation was?

15 THE WITNESS: If I can pull my cell phone. I
16 would say within the last year, probably within the
17 last six, maybe within the last -- sooner than that.

18 THE COURT: That is close enough for now.

19 THE WITNESS: If it is --

20 THE COURT: I will admit Defense Exhibit
21 Number 5.

22 (WHEREUPON, the above referred to document was
23 entered in evidence as Defendant's Exhibit
24 Number 5.)

25 THE WITNESS: I mean, essentially on this

1 specific evening, Lennon was home. And Owen had just
2 gotten back with me from Pokemon club and the kids were
3 having an enormous amount of fun. I believe it was
4 just after Halloween because they were probably eating
5 Halloween candy and then essentially Owen called his
6 mother. He tried to have a conversation with her and
7 he wanted to stay home that night. He wanted to be
8 with family and to not have to drive back to
9 essentially be left. So this -- in all discourse, the
10 only information that I have which I believe I'm
11 entitled to all the details, I would be giving her all
12 the details because it does relate to Owen when she is
13 working. She indicates here in this text message and
14 this has been her attitude as essentially who gives a
15 fuck about that? That in the context of this text is a
16 full conversation would show essentially Owen's best
17 interests of having a parent in the home, Owen's best
18 interests for schooling, who gives a fuck when I can
19 live off child support? She then emoji loved the idea.

20 THE COURT: I can interpret it. I have read
21 the entire --

22 THE WITNESS: Okay. Just to be clear, so I
23 have changed phones since then. I had a phone battery
24 died. So the phone text record comes across as that
25 text instead of an emoji. This is a text to show that

1 her having Owen is essentially a hardship and I believe
2 at the time of the JAD it said that she would be going
3 trying to get daytime work, trying to improve her skill
4 set and trying to move on. Don't have to believe me.
5 But if Amy Schwender were the father and she worked
6 full-time almost overnight, she was out of the home
7 leaving the child, sleeping during days and she
8 wouldn't be the caretaker of this kid.

9 MR. GALLAGHER: Objection. Speculation.

10 THE COURT: Overruled. What else do you want
11 to tell me? I have read this.

12 THE WITNESS: In terms of change of
13 circumstance?

14 THE COURT: Yes, sir.

15 THE WITNESS: I wasn't aware that her job was
16 at risk if she needed to be in the home for her son.
17 So this essentially puts her at a point of what I
18 believe is voluntary self impoverishment. Why hadn't
19 she begun working full-time? Why has she only
20 maintained a menial overnight shift? I have -- during
21 the same period of time, Ashley has an older daughter;
22 that kid has moved out of the house; lives on her own;
23 has a managerial job now and she is 20. I taught that
24 girl how to drive. If a kid can do it without any
25 background in things, an adult woman who has a God

1 granted reason to try and provide for herself should do
2 that. Like if she is not working more, then I don't
3 believe that she even --

4 THE COURT: This is more argument. So what --
5 are there any other facts you want me to be aware of to
6 demonstrate a change in circumstances?

7 THE WITNESS: In terms of change of
8 circumstances, at the time of the JAD there was a lot
9 of -- issue where Owen was going into therapy. If you
10 recall any of the circumstances, it is his mother's
11 contention that he needs to be in some type of therapy,
12 that he has some type of otherwise emotional problem,
13 without ever stating that the emotional problem is in
14 his prior expressed words and in fact in Ms. Shurline
15 (Phonetic) and his school's communications to me, not
16 seeing dad enough.

17 THE COURT: Okay.

18 THE WITNESS: So he wants --

19 THE COURT: I'm going to sustain that. You
20 can't put that in.

21 THE WITNESS: So the material change here is,
22 you know, Owen admitting this into evidence here and
23 opt out of counseling.

24 THE COURT: This is another exhibit you would
25 like to offer?

1 THE WITNESS: Yeah.

2 THE COURT: Defense Exhibit Number 6. What is
3 it?

4 THE WITNESS: This is opt out of counseling
5 here.

6 THE COURT: Okay. I will just mark this as
7 that for the moment.

8 THE WITNESS: It is just an e-mail back and
9 forth with his school. And it is dated in
10 October 2022. So this is post divorce but this is a
11 change in his circumstance since then.

12 THE COURT: An e-mail between whom?

13 THE WITNESS: This was probably initiated by
14 my in person at the school having meetings with the
15 counselors and administration. But this is an e-mail
16 from the school counselor to me sending the forms for
17 an opt out to essentially counseling. So as to prevent
18 the counselors from seeing my son at the public school.

19 THE COURT: All right. This is really the
20 transmittal of the opt out forms?

21 THE WITNESS: Yes, essentially. But it has a
22 short back and forth thread with me and Miss Schwender.
23 Essentially I'm submitting this to show in terms of
24 change of circumstance that, you know, under my
25 parental leadership and guidance my son doesn't need

1 counseling.

2 THE COURT: Okay.

3 THE WITNESS: That is a change from where he
4 was at the start of the divorce decree time period
5 where his mother believed and attempted to put him in
6 counseling repeatedly.

7 THE COURT: All right. Any objection to this?

8 MR. GALLAGHER: No.

9 THE COURT: Okay. Defense Exhibit Number 6 is
10 admitted.

11 (WHEREUPON, the above referred to document was
12 entered in evidence as Defendant's Exhibit
13 Number 6.)

14 THE WITNESS: Okay. On the Page 2 of this,
15 you know, this -- my response is here. You can see the
16 time stamps on the responses and on page 2 you will see
17 my reply here in back and forth with Amy was at
18 5:23 a.m. on a Saturday. You could presume that from
19 5:23 a.m. I would be awake for the rest of the day and
20 I would be having the day with my son. I would like to
21 just identify here that Miss Schwender's response isn't
22 until 8:51 p.m. that same day. She sleeps days. I
23 don't know what her sleeping schedule is. However, it
24 also impacts interactions like this to get information.

25 THE COURT: What else?

1 THE WITNESS: Change in circumstance, I
2 believe, if she wants -- she did not make a claim at
3 the time of the JAD that she was in fact sleeping all
4 day. I don't think that that came across because she
5 had an uncertain employment and living situation maybe
6 at that exact time. But the fact that she is sleeping
7 all day since the term of the JAD has impacted Owen at
8 school.

9 THE COURT: Why do you think she is sleeping
10 all day? You are not with her, correct?

11 THE WITNESS: Well, she has admitted that she
12 sleeps days and she works overnights. So you have to
13 sleep sometime, sir. And from my son's relays back to
14 me, his mother sleeps and his grandmother, who watches
15 him, I think that is corroborated by the fact that
16 Hunter Gallagher has met my son. Whereas spring
17 breaks, summer breaks, other times that aren't school
18 year where a parent needs to be awake in the home, my
19 ex-wife isn't there and my son has to spend his spring
20 break a couple of days down here waiting for grandma to
21 get off work --

22 THE COURT: Okay.

23 THE WITNESS: -- instead of climbing a
24 mountain or doing something with dad.

25 THE COURT: Got you. What else?

1 THE WITNESS: In terms of how that has
2 impacted Owen, I will use this just within the last
3 month.

4 THE COURT: How what has impacted?

5 THE WITNESS: Her sleeping. So in testimony
6 here, I --

7 MR. GALLAGHER: Before he starts, I'm
8 objecting to --

9 THE COURT: Your objection is noted. Don't
10 tell me what he has said.

11 THE WITNESS: Not what he has said. This is
12 solely between myself and her on a school pickup. So
13 on a normal Friday pickup, I think you termed the JAD
14 has me picking him up at 5:00 p.m.. This is absurd and
15 I always contended that is absolutely absurd that I'm
16 not picking my son up from school, especially with my
17 schedule. So in the past I have tried to arrange with
18 my ex wife to pick him up from school on Friday instead
19 of at 5:00 p.m. which actually is now a rush hour
20 around the Beltway. It is just inconvenience on some
21 point of everything else with no solid grounds or
22 reason to deny a request to pick him up from school.

23 On this particular Friday, the school let out
24 early. So there was inclement weather coming and the
25 school let out early. All right. This has happened

1 before in the past more than once. But this past last
2 time --

3 THE COURT: When was this?

4 THE WITNESS: Within the last say month,
5 December, I believe, but maybe January.

6 THE COURT: So when we got the snow earlier?

7 THE WITNESS: Just since the proceeding
8 started. My ex wife would make absolutely no
9 concession until essentially December when I had made a
10 filing. Since then I think I can count two exceptions.
11 One of them was to allow me to pick him up from school
12 early instead of at 5 p.m.. That wasn't precipitated
13 by her.

14 THE COURT: When did that take place?

15 THE WITNESS: Within the last few weeks. I do
16 have a text record back and forth. But in this text
17 essentially I asked her hey, I would like to get him
18 early, school is letting out. There is a huge storm
19 coming in, government buildings shutting down. Seems
20 reasonable, correct? She did not respond. So I
21 started driving to the school. I understand that she
22 wasn't going to be available and by the time she
23 responded stating I was asleep, I was already at the
24 school and let out was happening. So I was picking my
25 son up with her asleep, essentially missing the -- so

1 that had not happened in the past where she I believe
2 wouldn't have been available for a pickup. But I think
3 that her persistent work schedule is now keeping her
4 asleep at odd hours that she otherwise should be
5 available, if she were to be full custodian of Owen,
6 especially going into middle school. He is older now.
7 He is not a child that can sit on an iPad.

8 The other information that --

9 THE COURT: So you maintain that Miss
10 Schwender's work schedule is different now and that has
11 caused her to sleep more than at the time of the
12 judgment of divorce?

13 THE WITNESS: Sure. She never worked
14 overnights before. That was a new job at that time and
15 now it has been three years.

16 THE COURT: But it had taken place before the
17 hearing, correct?

18 THE WITNESS: I would like to just state if
19 you tried to change your sleep schedule, sir --

20 THE COURT: Sir, you really have to listen to
21 my question. It is helpful for me to hear what you
22 have to say.

23 THE WITNESS: I'm trying to form what you
24 asked.

25 THE COURT: Miss Schwender was doing overnight

1 work before we had the hearing in January of 2022,
2 correct?

3 THE WITNESS: On my best recollection.

4 THE COURT: Yes.

5 THE WITNESS: I wouldn't say very long.

6 THE COURT: Okay.

7 THE WITNESS: In fact, on changing of
8 schedule, if I wanted to change my sleep schedule, put
9 it like that, or if most normal people that aren't
10 exceptional change their sleep schedules it takes a
11 couple of weeks for those types of circadian rhythms to
12 step in. It is not easy to snap back away or not when
13 you have changed your whole lifestyle to be nocturnal.
14 Your daytime hours are limited. And over time it gets
15 more set in.

16 THE COURT: I understand your point.

17 THE WITNESS: The other change in factor is
18 Owen has more needs as a nine year old now.

19 THE COURT: Describe those.

20 THE WITNESS: Needs for activities. So a four
21 year old can run around playing with stuffed animals
22 and be immensely happy with public theater. A nine
23 year old needs friends. A nine year old needs
24 activities. A nine year old needs more than day care
25 style interaction in those activities. I would give

1 two examples of terms of care. You could sign the
2 child up for a club or you could be a parent that
3 involves themselves in the club. The student generally
4 with the parent that is involved will have better
5 enjoyment in the club. But that doesn't just apply to
6 school clubs and volunteering. That applies to things
7 like music lessons, applies to things like sports and
8 applies to things like friendships where outside of
9 school opportunities have to be facilitated by the
10 parents for your kids to make and keep friends.

11 The circumstantial changes, I think evidence
12 like the text messages and the interactions of Amy that
13 show how she reacts to other children and other
14 entities in Owen's life show how she causes a negative
15 influence there. Like in the same text message link
16 that she will state might lose a great paying job but
17 who gives a fuck about that when I can live off child
18 support? She then states Owen needs to be home
19 7:00 p.m. in the door. Owen hates Lennon. So these --
20 I mean, attacking friends in his life, attacking other
21 children in his life and then the other large change is
22 I think even admittedly here my ex wife has limited my
23 son's ability to see his grandmother. I don't mean
24 Cathy, his Mimi --

25 THE COURT: Your mother.

1 THE WITNESS: Pamela Shawn Barry, Lawrence
2 Eugene Barry have been impoverished from my son.

3 THE COURT: What do you mean by that?

4 THE WITNESS: Kathy Schwender and to my
5 understanding Allen Schwender see Owen weekly; Kathy
6 every night. Kathy sits with him while Amy --

7 THE COURT: Tell me about your grandparents.
8 When you said they were impoverished, I don't
9 understand what you mean.

10 THE WITNESS: In terms of timing. It is
11 absolutely clear that the other party here, the
12 Plaintiff, has stated that they have reduced the amount
13 of time that I have with my son since the JAD. So at
14 the JAD, whatever the term of our agreement was, we
15 made an agreement for an amount of days and an amount
16 of convenience and amount of time and flexibility where
17 if I said hey, I would like to keep Owen Sunday night
18 into Monday, so he can stay in Virginia until 5:00 p.m.
19 and have that full day with my parents and I can drive
20 back and be back in Baltimore by 8:00 p.m., my parents
21 live in Virginia --

22 THE COURT: Okay. What happened on those
23 occasions?

24 THE WITNESS: Well, what happened on those
25 occasions, well, in terms of what the change is, after

1 the JAD with the contempt arrangement that Amy
2 provided, I would have been permitted to go and keep
3 him that extra day and I would have dropped him off.
4 That is where the source of my additional overnights
5 came from in terms of all that I was being offered him,
6 not freely, but on my request, extra nights and
7 weekends and then we had a standardized agreement where
8 extra nights were already included. Just, again, that
9 change is now back to the JAD. So returning to the JAD
10 is actually a change since the initiation of the JAD.
11 The JAD was never followed until the October, I believe
12 2023 Halloween where I made a request to alternate
13 holidays because we had essentially split holidays up
14 to that point, including spring break, Judge Truffer.

15 So in the JAD, the concept of spring break is
16 huge for my son because it a midyear vacation and lots
17 of kids go to the beach. I think both sides of the
18 family have access to beach properties in Owen's
19 circumstance, so he is very fortunate. However, this
20 last year he sat in the courthouse because there is not
21 even a mention of spring break in the JAD. However,
22 Amy and I had been splitting that. So essentially
23 four days you, four days me; four days you, four days
24 me and that let me take him away for a couple days and
25 her if she chose away for a couple days. But now it is

1 all with her. And she doesn't change her work schedule
2 necessarily and her sleep schedule certainly doesn't
3 snap back to reality in terms of that week. So a
4 regular schedule for her would have her sleeping during
5 the day while he is on vacation instead of being in a
6 home with someone who is awake. And during vacation
7 his grandmother doesn't get off work. So this leads to
8 situations where my son will have to spend time in
9 District or Circuit Court here in Baltimore County
10 based on what his grandmother is doing on a vacation.
11 I think that is tragic for a little boy, especially one
12 who has had paperwork, paperwork told to him as reasons
13 why he can't see dad.

14 THE COURT: What else do you want to tell me,
15 Mr. Barry?

16 THE WITNESS: I think it constitutes a large
17 change that in only October of 2023 that the JAD was
18 ever followed.

19 THE COURT: Okay. Let me make sure the record
20 is clear. You have referred repeatedly to the JAD.
21 You are referring to the custody schedule entered in
22 the judgment of divorce in January of 2022?

23 THE WITNESS: I'm referencing the entire
24 document because it is not just the custody schedule
25 that was not followed.

1 THE COURT: We are here talking about custody.
2 That is what -- when you use that term, that is what
3 you are referring to?

4 THE WITNESS: Sure.

5 THE COURT: Okay.

6 THE WITNESS: And another change is just
7 simple personal habits. So at the time of divorce and
8 you know, even prior, as much as you can make any
9 statements and I will just make some bare statements
10 here on, you know, the incident of mental breakdown
11 which was termed and investigated properly by the
12 Court, just to have real opinion, it wasn't an isolated
13 incident. I can aver all day that I don't believe this
14 is the proper venue, that circumstances from that could
15 drive anyone crazy. But then to have your son
16 alienated from you for a year and then to be told that
17 he is having emotional problems because he is not
18 seeing dad and then to have your ex-wife's mother's
19 boss assigned to settlement in your case and then I
20 think even at the time the assignment office refused to
21 put a judge in my case until after Cox had resigned, I
22 think that is factual statement that can be made --

23 THE COURT: No, not accurate.

24 MR. BARRY: It is. I have the documents for
25 that.

1 MR. GALLAGHER: I will object on relevance.

2 THE COURT: It is not relevant. But go ahead.

3 THE WITNESS: It will just not seem so
4 irrelevant with that. The emotional context of that,
5 if there were anything like a problem of any type of
6 substance abuse, in any of those incidents, that simply
7 has been gone from my life. And you know, increasing
8 ways, gone from my life and increasing ways that the
9 enjoyment of things for life like fine wines or
10 something like an expensive whiskey stated on record.
11 Stated on record. In those instances I also stated on
12 record and accurately that it was not done in the
13 context of the child. Not in his presence. Not around
14 Ashley's daughter either. Essentially in the context
15 of going out for a good meal or when the kids aren't
16 home. That has even stopped. Less and less, more time
17 with the kids has essentially shifted to essentially a
18 dry household and I am, at least at the time of
19 divorce, was aware that there is a wet household that
20 is where Owen resides where things like cooking wines
21 and things like that may be in Kathy's shelf, but an
22 unlocked shelf where stuff is sitting.

23 THE COURT: Nobody is drinking cooking wines.

24 THE WITNESS: Sure, but a kid may be getting
25 into a cabinet where things are locked up. I'm not

1 making a statement these are dangers. I'm essentially
2 making a statement that along the terms of what Amy
3 Schwender has deemed reasonable behavior since the
4 divorce has changed in this record. Whereas she
5 maintained, I believe, until October of 2023 a regular
6 bar night at least one night a week in her own life,
7 which was on top of her working outside the home. So
8 she would meet again for a bar night regularly and with
9 the context of this last vacation that she has taken --

10 MR. GALLAGHER: Objection.

11 THE COURT: Overruled.

12 THE WITNESS: The last vacation that she has
13 taken, she has taken Owen on a cruise now, which in my
14 contention is a floating bar. I don't enjoy personally
15 that, but I understand that her and her mother think
16 that that is an enjoyable experience. My trepidations
17 and things like that are simply involving the child
18 with situations where drunken brawls occur, in terms of
19 their destinations, places where there is higher crime
20 and State Department risks that a normal parent would
21 be adverse taking a child into. She laughs it off and
22 I assume that is her general regard towards those types
23 of clauses of travel, travel notification and things
24 like whether alcohol around the child is a big deal or
25 not. And I believe that is from her side, not mine.

1 My life has gotten dryer. I think that the JAD's
2 circumstances changed whereas the Plaintiff hasn't
3 quite followed the intent of that with her custody.

4 THE COURT: All right.

5 THE WITNESS: Not to get rid of cooking wine
6 for Kathy or not to even stifle a glass of champagne at
7 an event, doesn't compare to bringing the child to
8 active bars or other things that everyone should know
9 is not appropriate.

10 THE COURT: Okay. Anything else to tell me,
11 Mr. Barry?

12 THE WITNESS: Well, that is the large part in
13 terms of all context in the changes in the JAD for the
14 situation of Owen. I wasn't aware that I could go to
15 the bar and then return home and have my son there just
16 after I had drank. My reading of clauses like that was
17 essentially if you are the custodian of Owen Barry, not
18 to drink before you have custody, which I would assume
19 is a return to custody once she is back in the home. I
20 don't know how to coalesce some language like that.

21 The other change is simply the flexibility
22 that Owen needs. So the language is very clear-cut.
23 So when my ex wife can tell me foot in the door at 7,
24 she can tell me that until she is blue in the face but
25 traffic is going to have me home at 7:15. Or she can

1 tell me that until she is blue in the face but Owen
2 wasn't even able to get his shoes on and get everything
3 cleaned up until it was about 7:15 and we couldn't
4 leave until then just because I'm trying to get him
5 together. Again, for circumstance where he shouldn't
6 leave the house in what I think is his best life, but
7 that is how it currently is with the absolutely
8 untenable and restrictive language. It essentially
9 created a battering ram and the change is being used as
10 a battering ram. Prior it had not been.

11 THE COURT: I see. You have made that point
12 well. Unless there is anything else?

13 THE WITNESS: I have some allegations of some
14 neglect and things. I don't want to bring in my
15 child's entire wardrobe of clothes that he has rips in.
16 Yet when he is home, he was wearing a size 6/7 T-shirt
17 that I had bought him when he was five years old.

18 THE COURT: All right.

19 THE WITNESS: I have since bought him fitting
20 size large clothes. He is a 12/14 right now in terms
21 of clothing size. There is no --

22 THE COURT: Does he like the T-shirt? Is it
23 something unique about that he prefers?

24 THE WITNESS: If it is too tight and you are
25 the kids parent, you have to dress them appropriately

1 and some things have to come out of rotation, so out of
2 cycle. This is a continual issue and the worsening
3 part of it has happened since October. So when I had
4 my son more in contempt of what this Court thinks is
5 his best interests, I was able to more regularly repair
6 his clothes, tend his shoes, get him things like
7 haircuts, which have still continued. In fact, I am
8 the one that has gotten him out all of his haircuts
9 since the decree, even in my limited time. My care for
10 my son extends into his personal wellness and hygiene
11 and above and beyond and his emotional health above and
12 beyond what I might want to do for myself.

13 THE COURT: Understood.

14 THE WITNESS: I would love to sit with him at
15 the park all day but the kid needs to get his hair cut
16 sometimes.

17 THE COURT: That is laudable that you look at
18 it that way.

19 THE WITNESS: Well, yeah. And the problem
20 with him not being in my care puts him at risk. So
21 there is an issue of his shoe laces. Immediately
22 following the change back to the JAD October of 2023 my
23 son went full two week period without seeing me.

24 THE COURT: Okay. Why was that?

25 THE WITNESS: Because of holidays and because

1 of I believe at the time it may have even been school
2 holidays. So the idea of is school in session? The
3 JAD reads Wednesdays I get my son after school until
4 7:00 p.m.. What if it is a teacher workday? In my ex
5 wife's mind, that discretion states I don't see my son.
6 But then on a flip-flop, simply yesterday I made,
7 again, a request because I think even prior to the
8 hearing she could recognize it is important for him to
9 have time with each parent. I was able to pick him up,
10 but it was a teacher workday. So either she was in
11 contempt yesterday letting me pick him up --

12 THE COURT: What you are asking for is --

13 THE WITNESS: Full custody.

14 THE COURT: Listen to me. But on one hand you
15 are complaining that Miss Schwender has been more
16 flexible than the schedule might permit and on the
17 other hand you are criticizing for following the
18 schedule.

19 THE WITNESS: Well, as a criticism of the
20 schedule in both aspects of it. So essentially a
21 criticism of the Court's decree. I don't think it fit
22 reality or the needs of my son at the time which
23 immediately we were in contempt. I don't think that
24 decree stands at all. I do believe even with the
25 circumstance that Owen deserves to have his voice heard

1 or measured or assessed, at the very least the home
2 circumstance of him where he is decreed to be
3 full-time, needs to be assessed and changes at this
4 point, sadly shouldn't be able to come lately to this,
5 because Owen is growing up and advancing and he is not
6 stopping, he is advancing to middle school now. That
7 will be a change. And he has an opportunity to be --
8 the next part to try and make the case for his best
9 outcome what that really looks like in terms of
10 schooling, housing and no, it doesn't mean excluding
11 any parties. I was honestly alienated from my son for
12 a full term year by that woman and my ex wife --

13 THE COURT: I understand that --

14 THE WITNESS: My ex wife wouldn't allow phone
15 calls.

16 THE COURT: I understand that. And we had a
17 hearing --

18 THE WITNESS: There was no retribution on my
19 side.

20 THE COURT: And it was me, this Court, that
21 thought that that wasn't right, that you needed to have
22 more time with him.

23 THE WITNESS: You did not do enough, Judge.

24 THE COURT: Okay.

25 THE WITNESS: You did not do enough at the

1 time and my son -- whatever his past suffering was, it
2 could be made a whole lot easier for him going forward.
3 I'm not the party with animosity. I left her. She is
4 still angry at me.

5 THE COURT: Okay. I understand your view.

6 THE WITNESS: So to move on, hopefully I have
7 made the best case that I can with evidence that there
8 has been substantial change in circumstance. I don't
9 want to follow-up contempt with what the word of the
10 law reads. Ultimately it is your discretion. But
11 there is an enormous amount of contempt from the
12 Plaintiff of the decree that --

13 THE COURT: You use the term contempt, meaning
14 divergence from the terms?

15 THE WITNESS: Yes. I am not doing a back and
16 forth where I'm angry if she admits some concession or
17 I'm angry if she doesn't. The terms of his custody
18 don't make sense to allow flexibility.

19 THE COURT: I see. Okay. Thank you. All
20 right. Mr. Gallagher, cross-examination.

21 MR. GALLAGHER: Judge, thank you. If I may
22 inquire?

23 THE COURT: You may.

24 MR. BARRY: I don't want to cut you off, but
25 on this cross-examination, this is just purely for

1 grounds to proceed?

2 THE COURT: Talk to me. Talk to me.

3 THE WITNESS: I can ask him maybe but you.

4 THE COURT: You can ask me.

5 THE WITNESS: On this -- so this is purely --

6 THE COURT: The issue before me is two-fold:

7 The first one is is there a material change of
8 circumstances? I don't get to the second one unless I
9 find the first one. So I am sure during your
10 examination I limited things you wanted to say in that
11 way. So this cross-examination will be similarly
12 limited. All right. Mr. Gallagher.

13 MR. GALLAGHER: Thank you.

14 DIRECT EXAMINATION.

15 BY MR. GALLAGHER:

16 Q. Talking about the Wednesday schedule, you
17 would agree that first of all you have been late
18 several times on returning Owen on Wednesday evenings?

19 A. Yeah, absolutely. I would admit that in terms
20 of what I have just testified. So a 7:00 p.m. hard
21 deadline doesn't fit and if I have picked him up from
22 school and would have taken him back to Baltimore City
23 doesn't allow a lot of time. So yes, of course there
24 has been lateness. And also been --

25 THE COURT: Sir, you have a tendency to want

1 to explain. It helps a lot if you just listen to the
2 question and answer what is being asked. I will give
3 you a chance to follow-up if you like.

4 THE WITNESS: Thanks.

5 Q. And you are frequently late to the tune of
6 30 minutes to an hour, isn't that fair to say?

7 A. I think that would be accurate to reflect
8 leaving at 7 from home rather than arriving at 7. That
9 is driven mostly by the child, yeah.

10 Q. Would it be your preference that you just did
11 not have a Wednesday and instead were able to pick up
12 Owen from school on Fridays?

13 A. That is not the issue.

14 Q. My question was if you had a preference to get
15 rid of the Wednesday clunkiness and move to a Friday
16 instead?

17 A. I have to answer that by saying it is not
18 acceptable.

19 THE COURT: Right. It is not your preference.
20 I could have bet on that one.

21 THE WITNESS: I volunteer on Wednesdays for
22 Pokemon club.

23 THE COURT: Wait.

24 Q. Regarding the Wednesday drop offs, more often
25 than not you are substantially late for Wednesday drop

1 offs?

2 A. False. I would like to say -- no. Maybe you
3 --

4 THE COURT: Wait for a question. Mr. Barry,
5 you have to wait for a question. Mr. Gallagher, we are
6 still on material change of circumstances, right?

7 MR. GALLAGHER: Yes. Thank you.

8 THE COURT: Okay.

9 Q. Let's talk about the school enrollment. When
10 you were married to Miss Schwender you were living with
11 her mother at the address you currently contend she
12 resides at, right?

13 A. I was living in Virginia.

14 Q. There was a time when all of you were living
15 together, you, your son, your then wife?

16 A. Yeah, at some periods during separation for me
17 to see my son I was residing in the basement. But we
18 had a separation at that point. I believe I stated I
19 was seeing other people.

20 Q. While you all were living together prior to
21 the divorce you all had made a plan to move to your
22 father in-laws house, is that right?

23 A. Absolutely not.

24 Q. Okay.

25 THE COURT: Mr. Gallagher, my focus is from

1 January of 2022 forward. So if these matters predated
2 that, how are they relevant?

3 MR. GALLAGHER: Judge, the parties have come
4 to an agreement regarding where the child would be
5 enrolled and that agreement followed up with the same
6 year, 2022. Shortly thereafter with an enrollment in
7 the same year, 2022, shortly after it would show that
8 they were acting in accordance with the plan and
9 therefore it was not a material change. That would
10 have been my argument.

11 THE COURT: Okay. Go ahead. Wait for a
12 question.

13 BY MR. GALLAGHER:

14 Q. Mr. Barry, part of your claim for a custody
15 material change is you believe Owen needs more
16 activities, is that right?

17 A. And different, yes. I think he needs more
18 activities and he has a preference for different ones.

19 Q. And you talked about music lessons, sports and
20 clubs on direct, right, as in Owen needed those things,
21 correct?

22 A. That is not the context of what I spoke about.
23 I did mention that the things that are important for
24 him are music; that also includes sports and other
25 activities.

1 Q. Okay. So --

2 A. Not specific to his music class. Just to
3 clarify, I understand he is in enrolled in music but I
4 made no statement --

5 THE COURT: Music, sports and clubs. I think
6 you did mention that in --

7 THE WITNESS: Yes, those things are important
8 to him absolutely, 100 percent. I'm just making a
9 statement not his current enrollment in a music class.

10 Q. So talking about current enrollment, my client
11 enrolled him in piano lessons, correct?

12 A. That is my understanding.

13 Q. Okay. My client since the time of the divorce
14 had Owen in regular soccer practice, correct?

15 A. I don't think that is true.

16 Q. Okay. And Owen is not currently in soccer, is
17 he?

18 A. No. And I don't think that his mother has had
19 him in soccer practices regularly. I'm unaware.

20 Q. And there was a time when Owen was in soccer
21 practice since the divorce; is that correct?

22 A. He had been enrolled in soccer at a few times
23 here and most recently was this last, I believe, 2023
24 season in soccer or -- yeah -- 2024, 2023, yeah.

25 Q. And when -- when he was in soccer he had

1 regular practices during the week, correct?

2 A. He had a scheduled practice in his last
3 soccer, a Wednesday.

4 Q. And you did not take Owen to soccer practices
5 recently, correct?

6 A. He went to his first practice and his first
7 game this year.

8 Q. My question was whether you had taken Owen
9 regularly, consistently to his soccer practices when he
10 was enrolled in soccer, yes or no?

11 A. Until he was unenrolled. While he was
12 enrolled I take him a hundred percent of his practices
13 and games. He was only enrolled in soccer for one
14 practice and one game. He did not enjoy that. This
15 was his last time through soccer. So this last
16 instance. If I can follow-up, I will follow-up if you
17 need a blanket explanation of that.

18 Q. The reason he was unenrolled was because of
19 your unwillingness to take him to soccer, right?

20 A. Incorrect. It was his un-interest in soccer
21 and his low rank team that he was assigned to.
22 Essentially he got creamed with kids who were under age
23 for a league that they were in. He did not enjoy that.
24 That is the reason why he did not want to continue
25 soccer.

1 Q. Regarding clubs, Owen is in chess club at
2 Warren Elementary?

3 A. He has been in chess club. He has also been
4 kicked out of chess club and reenrolled in chess club.

5 Q. Owen has a switch?

6 A. He to my knowledge has in fact now. But he
7 doesn't always have a switch.

8 THE COURT: What is a switch?

9 Q. That was my next question. If you can explain
10 what is a switch?

11 A. What is a switch in -- I will explain. And
12 just to break aside all panic Amy on this --

13 THE COURT: Tell me what a switch is. That is
14 all I'm asking.

15 THE WITNESS: A Nintendo device.

16 THE COURT: Okay.

17 Q. And it is a hand-held video game, fair to say?

18 A. Well, it is. I don't have more information
19 than that on the specifics.

20 THE COURT: That is all I need to know.

21 Q. It connects to the Internet?

22 A. Absolutely. I believe that --

23 Q. And you can use it to talk to other people
24 while holding the device?

25 A. Incorrect. It doesn't have an integrated

1 microphone.

2 Q. You can use it to digitally message people
3 with text, other people via the Internet?

4 A. At the very least. It supports auxiliary
5 devices like microphones too.

6 THE COURT: You can ask further questions, but
7 that satisfied my inquiry.

8 MR. GALLAGHER: Thank you.

9 Q. You contended that Owen lost access to his
10 friends. Is that because Miss Schwender took away his
11 switch for a period of time?

12 A. More than that. Yes, that is a big thing is
13 you know -- essentially that is the soccer issue. When
14 Owen said that he did not want to be in soccer any
15 more, his mother --

16 Q. My question wasn't about soccer. If you can
17 stick to the switch.

18 THE COURT: That is alright. It is
19 tangential. Go ahead.

20 THE WITNESS: His mother essentially called
21 him a liar. Demanded the fees for soccer back to him
22 and gave his switch to her boyfriend.

23 Q. You were not there when she called him that,
24 were you? Yes or no?

25 A. When she called him a liar? I was on the

1 background hearing on the phone. So he had
2 conversations and I have heard her call my son a liar
3 and it has no context to him not wanting to play
4 soccer. He wanted to spend more time with dad. So he
5 was punished for expressing to his mother he wanted to
6 spend more time with dad. Part of that punishment was
7 giving his switch away for months to her boyfriend.

8 Q. Okay.

9 A. Who doesn't live in the home.

10 Q. So let's talk about the switch for a moment.
11 Owen is allowed or is able to talk to total strangers
12 through this device, right?

13 A. On his mother's account.

14 Q. On his switch?

15 A. On his mother's account. You are talking
16 about at his mother's, correct?

17 Q. I'm asking whether Owen using a switch
18 regardless of where he is or how --

19 A. Using a switch.

20 Q. Let me finish. You are able to talk to total?

21 A. Using a switch?

22 Q. His?

23 A. Only if it is not curated to lock down voice
24 chat and other features, which I don't believe his
25 mother does.

1 Q. So yes?

2 A. With his mother's device. I will just say no
3 with the device at home. We have a curation where at
4 the very least he is monitored while using the device.
5 So there is only closed voice parties and in my home it
6 is with his friends.

7 Q. Okay. He can talk to adults through the
8 switch that he doesn't know are adults?

9 A. If it is un curated, like it is at his
10 mother's.

11 Q. Assume it is un curated?

12 A. I agree. Any computer device as a matter of
13 fact, correct.

14 Q. There was a time in the last I will say six
15 during which Owen was chatting with individuals and one
16 of them made sexually explicit comments in the chat,
17 yes or no?

18 A. In terms of Owen chatting with someone? Is
19 there an event that occurred that you wouldn't have
20 informed me of?

21 THE COURT: Are you aware of any?

22 THE WITNESS: I'm not aware of Owen chatting
23 with anyone and there being sexually explicit comments.

24 Q. So Owen was taken out of soccer and you had a
25 reduced time with the switch which has since been cured

1 and that is your contention for decreased access to
2 friends, is that fair to say?

3 A. Not fair at all. Or accurate.

4 Q. Okay.

5 A. I think you have gone off on a tangent about
6 how he can talk to strangers at his mother's.

7 THE COURT: Just answer the question.

8 Q. Is there anything else that you want to add
9 regarding his reduced access to friends?

10 A. Regarding his reduced access to friends that
11 one of the dearest friends that he has is Lennon who
12 they are -- as close as any cousins or step siblings
13 can be. They spend half of every summer together.
14 They are about to leave for a week vacation together.
15 Will be in a cabin as a blended family. Reduction in
16 time is a hundred percent precipitated by his mother.
17 She has reduced his time with friends like not just
18 little girl mentioned or otherwise through reduction in
19 the switch. That is accurate. And also while Owen is
20 in her care she does not have or at least has a reduced
21 amount of say play dates due to contentions that she
22 has with other parents. That would be a guess, but the
23 reduction is what --

24 THE COURT: Sir, answer the question. I have
25 to conclude this hearing, probably by 12 or 12:30. So

1 try to just answer the question.

2 Q. You keep talking about your step daughter, but
3 this is your fiancée's daughter?

4 A. It is my fiancée's daughter. That would be my
5 step daughter.

6 Q. And she has been your fiancée' for how long?

7 A. My fiancée' for how long? Well, just say we
8 have been tentatively engaged since we ever met but she
9 has a ring on her finger. We will be getting married
10 under the right context but I don't think I need to
11 disclose those. I will disclose as much as I can.

12 Q. You talked about living in the new home. The
13 house you are living in is titled to your fiancée'?

14 A. Correct.

15 Q. And it is paid for by your fiancée'?

16 A. Incorrect. I'm the only income in the house.
17 I'm the head of household. She is not working.

18 Q. Okay. Court's brief indulgence. I'm trying
19 to keep things on the side of the fence that says
20 material change.

21 MR. GALLAGHER: No further questions. Thank
22 you.

23 THE COURT: All right. Unless there is
24 anything else, you can step down, Mr. Barry.

25 MR. BARRY: On just this matter, I assume I

1 will take the stand on the best outcomes if something
2 occurs here. Unless I can continue on to what his best
3 interests are.

4 THE COURT: Not at this point.

5 MR. BARRY: Understood. I will get my stuff.

6 THE COURT: Very good. Thank you. Why don't
7 we take just a very short break. It is 11:10.

8 (Brief Recess.)

9 THE COURT: We are back on the record and the
10 parties and counsel are present. And unless there is
11 anything else from Mr. Barry, we will move to Miss
12 Schwender's case.

13 MR. BARRY: Well, in terms of that, is that me
14 then going forward or is this just in the case of
15 establishing --

16 THE COURT: Yes, in terms of whether there has
17 been a material change in circumstances.

18 MR. BARRY: I appreciate keeping me up on what
19 the docket says.

20 THE COURT: You can ask questions any time
21 about that. Mr. Gallagher?

22 MR. GALLAGHER: Before I call my client I will
23 move for judgment with respect to the material change
24 now that the Plaintiff has rested or the moving party,
25 the Defendant in this case has rested.

1 THE COURT: It is thin, but taken in a light
2 most favorable to Mr. Barry, which I must do at this
3 point, I think there is probably enough to at least go
4 forward in the case and I'm going to deny the motion.

5 MR. GALLAGHER: Thank you. One moment. I
6 will call my client to the stand very briefly.

7 THE COURT: Very good. Miss Schwender.

8 AMY SCHWENDER ,
9 a witness called to testify on behalf of the Plaintiff,
10 was duly sworn and testified as follows:

11 THE CLERK: State your full name and spell
12 your name for the record, please.

13 THE WITNESS: My name is Amy Kathleen
14 Schwender, A-M-Y, Kathleen, K-A-T-H-L-E-E-N, Schwender,
15 S-C-H-W-E-N-D-E-R.

16 DIRECT EXAMINATION

17 BY MR. GALLAGHER:

18 Q. Good morning, Miss Schwender. I will try to
19 be very efficient and brief here. And I want to go
20 through the allegations the Defendant made in his
21 paragraph 3 on his petition to modify generally. So
22 talking about friends, who are Owen's friends, Ma'am?

23 A. Owen has many friends. He is friends with
24 Oliver, Lucas, Terrell and Ariel.

25 Q. And how many times have you met them or their

1 parents?

2 A. I see them a lot after school. He has been to
3 birthday parties for both Oliver and Lucas and they
4 have had play dates at my house; they trashed my house.
5 He has been to his friend's house as well. He does
6 play with them online occasionally.

7 Q. Do you do any volunteer work with the school,
8 Ma'am?

9 A. Yes, I do.

10 Q. And how many -- what kind of volunteering do
11 you do, Ma'am?

12 A. I was room parent for several years. I have
13 also worked with the librarian under the school lunch
14 program. I helped at the scholastic book fair. I
15 helped on play days. I have done field trips. I have
16 done several of the other events, like they had a
17 library event one evening.

18 Q. Are you required to volunteer at the school?

19 A. I am not.

20 Q. And what if any connection was Owen's friends,
21 teachers or Owen's friend's parents have you made as a
22 result of your volunteering activities?

23 A. I'm well-known at the school, at least first
24 name basis by many of the staff there. And I think I'm
25 friends with several of the parents of Owen's friends

1 and I have their phone numbers and I have texted them
2 over play dates and things.

3 Q. Since the date of the divorce, June 13th,
4 2022, what if any music lessons, sports or clubs has
5 Owen been involved with?

6 A. Owen is in piano lessons and has been for a
7 very long time. We ended up having to change to --
8 with dates -- change music teachers, but he has been
9 going for several years now for piano. He has been in
10 chess club for the last two years. This will be his
11 second year with Mr. Cummings and chess club, I
12 believe. And he was in art club previously for an
13 eight week stint because it was just like a pop-up
14 club. Supposedly they will have it again this year,
15 this semester and he said he would like to be a part of
16 it. I also enrolled him in soccer multiple times. It
17 is an eight week program that starts in September. I
18 always had a thing that Owen should do at least one
19 sport and one art a year and Owen always agreed and
20 said he wanted to do soccer. So every year in June I
21 always ask him if he wants to do it again and he always
22 says yes. The only issue is that this year the
23 practices fell on Mr. Barry's day and then we also
24 started more aggressively following the custody decree
25 and therefore, we have had to enforce third Saturdays,

1 which means Mr. Barry gets three Saturdays a month and
2 I only get one which means Mr. Barry has to take him.
3 Mr. Barry's reluctance to go to these things has rubbed
4 off on Owen. So Owen doesn't want to go and he would
5 rather stay home and play video games rather than go
6 participate outside.

7 Q. So based on your involvement at the school,
8 clubs, soccer, et cetera, what if any difference or
9 reduction in access to friends has Owen had since
10 January of 2022?

11 A. I don't think it has reduced any of his access
12 to his friends. I mean, he still sees his friends
13 every day at school. He is in clubs with his friends.
14 He even -- I mean, he was in soccer and he had friends
15 from his school per the soccer and he doesn't see them
16 any more on Saturdays. So it has reduced a little bit
17 because he no longer sees his friends from soccer.

18 Q. Thank you. There was an allegation that Owen
19 is neglected. Ma'am, how many meals does Owen get at
20 your house?

21 A. He gets three a day. I make him breakfast
22 every morning. He gets a beautifully packed lunch and
23 we usually do sit down dinners several nights a week.

24 Q. Ma'am, do you take him to the doctors?

25 A. Um, I do when there is call for it. The last

1 time he went was actually when he was vaccinated to go
2 to Warren. Other than that he has been a pretty
3 healthy kid, other than a few basic instances he hadn't
4 needed to go.

5 Q. How often does Owen bathe, if at all?

6 A. He showers every night.

7 Q. Okay. How often does he brush his teeth?

8 A. Every night. He is nine. So he tries to get
9 out of certain things. But we try to make sure that he
10 is doing it properly.

11 Q. Does he prefer toothpaste?

12 A. He uses Colgate because he thought that Crest
13 was too spicy.

14 Q. Could you describe his sleep routine, please?

15 A. We have very strict bedtime routine with Owen
16 for the most part. Usually around 8, 8:15, start
17 winding him down. He has to go take a shower, call his
18 dad and after that we usually settle down and read to
19 him for a half hour, 45 minutes depending on how long
20 everything else takes and usually he is in bed by 9:15
21 and usually asleep by 9:15 because he is actually a
22 pretty good sleeper.

23 Q. Let's talk about your work schedule briefly,
24 very briefly. Since -- let's be clear. Did you have
25 overnights on January 1st in 2022?

1 A. Yes, I did I.

2 Q. And do you have more or fewer overnights since
3 January 1st, 2022?

4 A. Fewer.

5 Q. Thank you.

6 MR. BARRY: In terms of objecting to things, I
7 know I can object on some hearsay things at this point
8 if I think what she is saying is objectionable,
9 correct?

10 THE COURT: You can object. If there is an
11 objection to that, the Court would overrule it. She
12 knows her own schedule.

13 MR. BARRY: No. I think I let that one get
14 away from me there. In terms of Owen going to sleep, I
15 have full records that state he is up much later than
16 this.

17 THE COURT: You can ask questions about this.

18 MR. BARRY: Great.

19 Q. There was discussions regarding some exchange.
20 I will withdraw that question. Ma'am, are you able to
21 compare your living situation between present day and
22 January 1st of 2022 for me and I will ask you this
23 generally. Is it the same or is it materially
24 different in your estimation?

25 A. It is exactly the same.

1 Q. Thank you. Ma'am, you heard the Defendant
2 testify regarding some flexibility in the custody
3 schedule and whether you were following it within the
4 first year, year and a half after it was issued. Would
5 you agree with his assessment that there was
6 flexibility in 2022 and some of 2023 regarding how you
7 follow the custody schedule?

8 A. Yes, there was.

9 Q. Okay. And why did you have some flexibility
10 in the custody schedule, Ma'am?

11 A. We were trying to co-parent and to make things
12 easier between the families and for Owen.

13 Q. And did there come a time when that wide
14 flexibility became narrower?

15 A. It did. Jeffrey wasn't about flexibility. He
16 was about switching the schedule over completely 50/50
17 so he kept pushing out the days, like on Mondays and
18 things and he would get angry with I would refuse to
19 give him Mondays, that he feel he is owed.

20 MR. BARRY: I will object and in terms -- she
21 is trying --

22 THE COURT: Overruled.

23 MR. BARRY: Sir --

24 THE COURT: Overruled.

25 MR. BARRY: I can object though.

1 THE COURT: Go ahead.

2 A. He would repeatedly ask me for the same things
3 over and over again. Eventually he got really angry
4 with me and told me that I wasn't handling the schedule
5 correctly and that I was in contempt and so I agreed
6 with him and I was like then maybe if I'm not handling
7 this flexibility well enough, that we should actually
8 follow the schedule that the judge dictated for us.
9 Even in the vacation motion, the judge had to
10 specifically request that Mr. Barry be kinder to me in
11 his text messages as he was quite often verbally
12 abusive.

13 Q. And about since when have you more
14 aggressively, to use your term, followed the custody
15 order?

16 A. Our falling out was in November of 2023.

17 Q. Okay. So well over a year you have been
18 following it to the T, more or less?

19 A. Yes.

20 Q. Thank you. Without telling me what they said,
21 did there come a time when you talked with anyone at
22 Baltimore County public school system?

23 A. I did.

24 Q. Okay. Specifically about whether Owen was
25 enrolled in the correct school?

1 A. Yes, they had received a call from Owen's
2 father and they wanted to talk to me about Owen's
3 housing situation.

4 Q. Okay. And were you prepared to have Owen
5 change schools at that time if they -- if anything was
6 requested from you?

7 A. I'm not going to fight Baltimore County over
8 Owen's housing situation. When I enrolled Owen at
9 Warren I legitimately thought I was enrolling him at
10 the school that he would be at.

11 Q. Let me ask you this, Ma'am. Succinctly, based
12 on your conversations with individuals at Baltimore
13 County public school system, do you have any concern
14 that he needs to be unenrolled at Warren and go to
15 another school?

16 A. No, they did not ask me to move him.

17 Q. Okay. That topic was explicitly discussed
18 with them?

19 A. Yes.

20 Q. And when was that topic discussed, Ma'am?

21 A. Um, I want to say that they called me in the
22 spring of 20 -- no. 2023, maybe. It has been a good
23 amount of time. Or maybe the fall 2023.

24 Q. For the record, I am putting in front of the
25 Plaintiff what has been premarked for Identification as

1 Plaintiff's Number 1. I shared a copy with the
2 opposing party. Ma'am, do you recognize this document?

3 A. Yes.

4 Q. What do you recognize it to be?

5 A. Um, it is an e-mail conversation that follows
6 up a phone conversation I had with the school nurse at
7 Warren regarding Mr. Barry requesting that Owen not be
8 vision or hearing tested by the State.

9 Q. And is this a fair and accurate copy of your
10 e-mail to the school?

11 A. Yes.

12 MR. GALLAGHER: I will move for admission.

13 THE COURT: All right. Has Mr. Barry been
14 given a copy?

15 MR. GALLAGHER: He has.

16 THE COURT: Unless there is any objection, it
17 will be admitted.

18 (WHEREUPON, the above referred to document was
19 entered in evidence as Plaintiff's Exhibit
20 Number 1.)

21 Q. You have heard the Defendant say that
22 effectively he needs to be in charge of your son's
23 care, is that right?

24 A. Yes.

25 Q. And in November of 2024 what, if anything,

1 happened regarding your son's care relative to this
2 exhibit, Ma'am?

3 A. Mr. Barry contacted the school to tell the
4 school that Owen would not be allowed to have his
5 hearing or vision tested. I was not aware of this. It
6 was never -- Mr. Barry never told me about this.

7 Q. Thank you. So we talked about your connection
8 with the school, the teachers, the other parents, et
9 cetera. What, if any, reputation does Jeffrey have
10 amongst the school staff at Warren?

11 A. Other than when he started doing Pokemon club
12 last semester, I was not aware that he had really made
13 any connection with anybody. I know he only recently
14 within the last year started talking to Mr. Doug, who
15 is Lucas' father.

16 Q. And what, if any, relationship did he have
17 with Mr. Cummings, Owen's former teacher?

18 A. As Owen's teacher, Mr. Barry would see him
19 when he would pick him up on Wednesdays. Beyond that,
20 I know that Mr. Barry had contacted Mr. Cummings on
21 several occasions regarding some issues with Owen in
22 his class. Mr. Barry had demanded that Mr. Cummings
23 give him like daily updates, weekly updates in regards
24 to Owen's actions and things.

25 Q. Thank you.

1 A. He also --

2 Q. If you would wait for a question, Ma'am. That
3 is all right. Just talk with me about Wednesday drop
4 offs briefly. Did there come a time when the Defendant
5 was late dropping off the child on Wednesday?

6 A. It is pretty much every Wednesday.

7 Q. And about how late is the Defendant every
8 Wednesday when he drops off Owen?

9 A. Usually a half hour to an hour.

10 Q. Okay. And what, if any, impact does that have
11 on Owen?

12 A. Well, it is a little bit of a struggle because
13 his dad dropping him off so late means it is tougher to
14 get to bed. But he also has homework to complete and
15 it is a kind of an issue because he needs time to
16 complete his homework. And then he has to start
17 settling down and getting ready for bed. So it is a
18 little bit of a rush. So he tends to get bed later on
19 those days.

20 THE COURT: So he does not do his homework at
21 Mr. Barry's house?

22 THE WITNESS: No. Homework is given out in
23 packets on Mondays.

24 THE COURT: Yes.

25 THE WITNESS: So Owen starts his packets on

1 Mondays and Tuesdays and it is a lot of work, so there
2 is a the least two every day that he is supposed to do.
3 Unless I put it into Owen's backpack in the morning on
4 Wednesdays, Mr. Barry wouldn't necessarily have it.
5 But it is kind of like we set aside that time, that
6 hour after Mr. Barry is supposed to drop him off at 7
7 so that Owen can finish his Wednesday pages.

8 THE COURT: If the homework was provided to
9 Mr. Barry or provided with Owen on Wednesdays, is there
10 any reason to believe that the homework would not be
11 completed at Mr. Barry's home?

12 THE WITNESS: I don't know.

13 THE COURT: You don't have a reason at this
14 point? You just don't know?

15 THE WITNESS: But it is also a requirement --
16 trying to figure out how to get it -- remember to get
17 Owen's homework in the bag on Wednesdays morning and it
18 is just kind of an odd way to deal with things. I
19 guess I could start breaking apart Owen's homework.

20 THE COURT: So it comes in a single physical
21 pact?

22 THE WITNESS: It comes in two different
23 packets. One is a math packet and one an English
24 packet. So I would have to break it apart.

25 THE COURT: Why couldn't you simply put both

1 packets in the backpack without breaking it apart?

2 THE WITNESS: Because I don't want it to be
3 left at Mr. Barry's and Owen not having his homework
4 for the rest of the week.

5 THE COURT: And since you never tried it you
6 don't know whether it would be left at Mr. Barry's?

7 THE WITNESS: I don't know.

8 THE COURT: Okay.

9 Q. Is that something you are willing to try,
10 Ma'am?

11 A. Yes.

12 Q. Okay. The last five times that Mr. Barry
13 brought Owen back late, did you inform him at all
14 regarding the issue with homework?

15 A. Yes, I did.

16 Q. Okay. And in the last five times that Owen
17 was brought back late did Mr. Barry request the
18 homework?

19 A. Um, I know that at one point he did request
20 that I put it in his backpack. He suggested that; but
21 he has never suggested it since or questioned whether
22 Owen was getting his homework done.

23 Q. Okay. When he requested it, when was that?

24 A. Sometime in November of 2024.

25 MR. GALLAGHER: Okay. No further questions.

1 THE COURT: All right. Mr. Barry, this is
2 your chance to ask questions. Not to argue, not to
3 make your own statements, but to ask questions of Miss
4 Schwender about what she just testified about. Okay.

5 MR. BARRY:

6 Q. What is that term, slight discretionary moment
7 here.

8 THE COURT: Sure. Take your time.

9 MR. BARRY: I'd like to start here. Is that
10 okay? All parties ready?

11 THE COURT: Yes. Go ahead and ask your
12 question.

13 CROSS EXAMINATION

14 BY MR. BARRY:

15 Q. All right. I would say here, Miss Schwender,
16 you stated that I had asked you about Owen's homework
17 and it was in the last few weeks. Had you ever brought
18 up the issue of Owen's homework before the incident you
19 are talking about?

20 A. Not the homework, but I have asked you to
21 bring him home on time because he has things to do.

22 Q. Just schoolwork issue. You are the Court
23 ordered custodial parent. Had you ever expected or
24 complained or attempted to make some comments about him
25 not completing his homework while he was in my care

1 prior?

2 A. We do our best to get it done but you have
3 definitely pushed it out to an hour more recently.

4 THE COURT: The question is have you ever
5 complained about Mr. Barry not completing Owen's
6 homework when Owen was with him?

7 THE WITNESS: About him not completing his
8 homework?

9 THE COURT: Correct. Have you ever complained
10 of that?

11 THE WITNESS: No.

12 THE COURT: Next question.

13 Q. Under the current legal custody and physical
14 custody arrangement, is that something that you expect
15 of me when I have Owen, that I'm taking care of his
16 homework and his other things that are just termed
17 basic day to day?

18 A. Under the current schedule I expect you to
19 bring him home on time so that he can be home on time
20 because we have reserved an hour to allow him to do his
21 homework.

22 Q. But you don't otherwise expect and you had no
23 inclination or interest or suggestion that he would do
24 his homework while he was in my care on Wednesdays,
25 these weekly homework packets?

1 A. No, because you do not have his packets.

2 Q. Okay. And you made no attempt to get me those
3 packets?

4 A. Not as of yet, because I reserved an hour.

5 THE COURT: We got that point. You don't have
6 to keep saying that. Mr. Barry.

7 Q. You said that it is very hard to work with me
8 on things like that and that I would essentially --
9 just use the word -- be rude. Do you have any specific
10 instance or ideation of what that rudeness looks like?
11 As in where have I been vitriolic? What is an example
12 of something that I might say that you view --

13 A. You have called me putrid and a horrible
14 person and a lot of other verbally abusive things for
15 almost a year between 2022 and 2023.

16 Q. Between 2022 and 2023 --

17 A. You had to be told about saying these things
18 to me was inappropriate by the judge when we went for
19 motions.

20 Q. I'm asking you --

21 THE COURT: Let her finish. You asked an open
22 ended question.

23 MR. BARRY: She did finish.

24 THE COURT: She is not -- have you finished
25 your answer?

1 THE WITNESS: As I was still talking while Mr.
2 Barry was talking, you were admonished because after
3 Judge Truffer had read the text messages between 2022
4 and 2023 when we broke down our ability to work
5 together, you had to be asked not to text message me
6 verbally abusive things. So since then you have been
7 much better about not doing it. But you did used to do
8 it.

9 Q. I would say just -- okay. Thanks for
10 answering the question. And in terms of that and the
11 recollection though, you don't have any other specific
12 example except the word putrid? Do you have a context
13 for what that was hurled at, as in you are putrid or an
14 action that you were presenting was putrid?

15 A. Um, I believe it was me and my actions because
16 I am one in the same. And it did not matter but it was
17 over a year of verbally -- this is not when we are in
18 court right now. But you were asked to stop because it
19 was enough that the judge had to ask you to stop.

20 THE COURT: I have got that point. Ask --

21 Q. I'm asking, there is no other instances except
22 those text messages that you brought up with the putrid
23 that you can cite in specifics?

24 A. Being that it was a year ago and this is not
25 why we are here, I did not review those specific text

1 messages.

2 THE COURT: Miss Schwender, if you say if you
3 got any more, say it. If you don't, say, no, it is
4 okay. It is not a critical issue.

5 MR. BARRY: I'm essentially trying to
6 establish the combativeness.

7 THE COURT: I was talking to Miss Schwender.

8 A. He has called me verbally abusive. He has
9 called me --

10 THE COURT: I have been here for awhile. I
11 have reviewed the text messages; I understand what you
12 are saying. But if you have no other specific
13 examples --

14 THE WITNESS: No, not currently.

15 THE COURT: Move on. Next question in another
16 area.

17 Q. Have you ever admonished Owen or called him a
18 liar?

19 A. I told him that he had lied to me.

20 Q. What is the circumstance where Owen you feel
21 was lying to you?

22 A. Because he told me he wanted to play soccer
23 where he told you he did not want to play soccer. I
24 very specifically asked if he wanted to continue to
25 play soccer this year. And he told me yes.

1 Q. Would you describe the wanting to play soccer
2 as something that Owen wanted to do as an activity?
3 And it is a preferential activity. So the idea is when
4 -- you are claiming that he did not want to play soccer
5 and he told you he did. So that was a lie?

6 A. Yes.

7 Q. Okay. So now, what outcome for Owen telling
8 you that he did not want to play soccer, what was the
9 punishment that he had to be dealt, for him wanting to
10 change activities?

11 A. I actually asked him before I signed him up
12 for soccer if he wanted to continue it or if he wanted
13 to try something else. He said, no, he wished to
14 continue with soccer. He did not want to do boxing,
15 did not want to do swimming, did not want to do
16 basketball, did not want to do anything else. And I
17 said that is fine, we will sign you up for soccer
18 because that is what he wants to do.

19 Q. Again, what was the punishment for him
20 changing his preference?

21 MR. GALLAGHER: Assumes facts not in evidence.
22 I object.

23 A. He ended up lying to me about a bunch of stuff
24 over the summer.

25 Q. Okay.

1 A. So when fall came around and I found out that
2 once again he lied to me on top of several other lies
3 that he had accumulated over the summer --

4 Q. I don't want to break that, but could you give
5 just an example, if you are saying that -- what was
6 maybe the first and what was maybe one in between?

7 THE COURT: Keep in mind the context in which
8 you are discussing things.

9 MR. BARRY: Sure.

10 THE COURT: It is have things changed? Has
11 there been a significant, substantial, material change
12 in the way the parties are living that may affect Owen,
13 specific instances of whether he has been -- may not
14 have fully told the truth or disciplined for it, unless
15 it is something severe really doesn't qualify.

16 MR. BARRY: But in the context, if I can
17 clarify --

18 THE COURT: Go ahead and ask the question. I
19 wanted to remind you.

20 MR. BARRY: -- where my aim is directing with
21 this --

22 THE COURT: Go right ahead.

23 MR. BARRY: The material aim is --

24 THE COURT: I was just reminding you. Ask the
25 question.

1 Q. Thank you. So in terms of the first instance
2 of lying, this was -- he began -- so there was a change
3 and you said he started lying more over the summer,
4 correct? So what was the instance where he lied in the
5 summertime that, again, we had to cause him punishment.
6 That is two questions. What was the lie and what did
7 that lie get him punished during the summer?

8 A. He would tell me he would do things like
9 helping to put away his laundry or things or I would
10 ask if he had done something and he would tell me that
11 he had and I would come to find that he did not because
12 he thought he would get away with it. He is nine. He
13 is testing boundaries. It is normal. Then when we
14 came into the fall, he lied to me. I found out that he
15 had lied to me about soccer. And it was part of also
16 he had a huge attitude concerning the switch when you
17 asked him to turn off the switch, he says no and he
18 gets nasty with you. And when you say you need to turn
19 it off now, I have given you a countdown, I gave you
20 30 minutes, I counted down to 10 minutes and then I
21 gave you two minutes to turn it off, he gets nasty and
22 then eventually I say you need to turn it off or I'm
23 going to take it away. He refused to take it away. I
24 said you know what, maybe we need to take a break from
25 all this. And we did. I took his switch from him.

1 THE COURT: How long did you have it?

2 Q. What does a break constitute?

3 THE COURT: Whoa. Whoa. How long was Owen
4 without the switch?

5 THE WITNESS: Three months.

6 THE COURT: Next question.

7 Q. Okay. So essentially the lies and the things
8 that you are seeing him newly begin with, maybe in
9 terms of laundry basic things, so he says he takes his
10 clothes somewhere and then you are averring that he did
11 not and he should be punished. But what is necessarily
12 like -- in your mind does a change in preference
13 warrant three month punishment?

14 A. Video games are a privilege, not a right.

15 Q. I understand. But we are using a privilege in
16 terms of punishment, wouldn't you agree? A reduction
17 in privilege is a punishment, sometimes?

18 A. When Owen is being as nasty -- Owen has a
19 slight addiction to video games. It becomes his whole
20 world to the point that he becomes just honestly
21 difficult and nasty when you ask him questions about it
22 or you are asking him to put it away. And honestly,
23 there was a point in which I did not want to deal with
24 it. So I told him it was going to have to go away for
25 awhile. But until he had an attitude change about the

1 switch, that we were going to just let it slide, it was
2 school year, we have things to do. And I'm not going
3 to fight with him all year over a video game.

4 Q. All right. And the question is, when did Owen
5 get the device? When was he purchased this switch?

6 THE COURT: Mr. Barry, I hate to keep harping
7 on this, but that issue is not a big deal to me.
8 Unless he is being locked in the root cellar, whatever
9 the parental response was is not a material change in
10 circumstances.

11 MR. BARRY: I understand. In terms of this,
12 like the punishment changes and circumstance and things
13 like that, all of these incidents, has Owen ever lived
14 at 24 Pickburn Court.

15 A. Physically lived, no.

16 Q. Has he mentally lived there though, is that
17 your allegation? He has never physically lived there?
18 Has he ever lived there, period?

19 A. No, not until -- no.

20 THE COURT: Whose home is that?

21 THE WITNESS: 24 Pickburn Court is my address
22 on my driver's license and it is my father's house.

23 THE COURT: Okay.

24 Q. So it is your father's address, correct? And
25 your home is would you state what that is? Where do

1 you live?

2 THE WITNESS: I physically live with my mother
3 currently.

4 Q. Do you stay there every night? Are you every
5 night staying there?

6 A. Yes, we have been there. The original idea is
7 that we would move into 24 Pickburn Court but then
8 COVID happened and my dad did not end up moving out of
9 his residence. So I ended up staying with my mom and
10 that also meant that there was instant child care. So
11 I work nights while she worked days and Owen never had
12 to be put into any type of day care or child dare care
13 by a person outside of our family.

14 Q. And do you consider me a person inside of
15 Owen's family?

16 A. Yes.

17 Q. Okay. And in terms of termed child care, do
18 you consider me a proper caretaker of Owen when he is
19 with me?

20 A. Sometimes.

21 Q. Can you express those times?

22 A. You are his dad.

23 Q. Okay. And do you have some necessary problem
24 or not if I say I'm watching him or he is staying over
25 in the summer period for two week stretches with me?

1 MR. GALLAGHER: Objection. Relevance. We are
2 talking about whether she has is abided by the Court
3 orders (Inaudible).

4 THE COURT: I'm going to overrule it. But
5 without going any further --

6 MR. BARRY: I will try and get to the point
7 with this.

8 THE COURT: Okay.

9 Q. But essentially to establish I will ask,
10 again, do you have any concerns with my ability to
11 provide three meals a day to Owen, to have him washed,
12 to take mental care of him and to essentially dote on
13 him as his father?

14 A. Mental care, I'm not sure about. But doting,
15 sure.

16 Q. Sure. Okay. Do you feel, if Owen were in my
17 care, that a babysitter is sometimes appropriate?
18 Would you say in the context of that?

19 MR. GALLAGHER: Objection. Relevance.

20 THE COURT: Overruled. Answer the question.

21 A. If he is in your care, you have the right to
22 provide any type of babysitter that you would like. As
23 when he is in my care, I have the option and right to
24 choose whoever I wish to baby sit my son or take care
25 of my son.

1 Q. Would you consider a change in babysitter
2 caretaker or schedule of that substantial change in
3 Owen's life?

4 MR. BARRY: Objection. Legal conclusion.
5 Speculation.

6 THE COURT: Overruled.

7 A. My mom, who I lived with, is not actually a
8 babysitter.

9 Q. Just yes --

10 A. She is a person who I live with and his
11 grandmother. And being able to have Owen in his home
12 where he doesn't have to go to another place to be
13 watched is better for him because there is more
14 stability in that.

15 THE COURT: You have answered the question.

16 Q. Thank you very much.

17 THE COURT: Next question.

18 Q. So what you are saying, just a yes, that for
19 Owen to be able to stay in one place with primary care
20 family care taker is in his best interests and is the
21 most stable when he doesn't have to say exchange places
22 or even have caretakers changed. So stability is best
23 for Owen?

24 A. Yes.

25 Q. Okay. How many nights originally did you work

1 your current job? So I don't need to know when you
2 exactly started.

3 THE COURT: What do you mean originally?
4 Before or at the time --

5 MR. BARRY: At the time of the decree.

6 THE COURT: January of '22. January of '22,
7 what approximately was your work schedule?

8 THE WITNESS: I worked Monday through
9 Saturday. So I worked six days a week. And I worked
10 11:00 a.m. to 5:00 p.m. six days a week.

11 Q. And has that changed since?

12 A. No.

13 Q. Sorry. That was both?

14 A. It was 11:00 p.m.

15 Q. But you worked six days a week that shift. So
16 six days a week you were not in the home, you were out
17 of the house?

18 THE COURT: And the question is has that
19 changed?

20 MR. BARRY: I want her to state. I'm getting
21 transcripts.

22 Q. You worked six nights out of the week you were
23 not at home with Owen; six nights out of the week?

24 A. He was asleep and did not know I was gone.

25 Q. I have had nightmares and woken up. Have you

1 ever had a nightmare?

2 THE COURT: Just ask her a question.

3 MR. BARRY: That was a question.

4 Q. You at that original time were working six
5 times a week. Currently how many nights are you
6 working?

7 A. I work four nights a week.

8 Q. Is that a substantial change?

9 THE COURT: That is for me to determine.

10 Q. Is it any change from six?

11 THE COURT: Six to four is a change. Whether
12 it is substantial is for me to determine.

13 MR. BARRY: Math can be subjective as well.

14 Q. I'm asking here the Plaintiff is six more or
15 less than four?

16 THE COURT: Mr. Barry --

17 A. It is more.

18 Q. So since the original term you started working
19 less. Have any of your costs changed since that? You
20 stated that you were going to be between addresses, you
21 did not know that you would be living at 24 Pickburn
22 Court. Do you hold a lease at either of these
23 properties?

24 MR. GALLAGHER: Objection. Scope.

25 THE COURT: Sustained.

1 MR. BARRY: Sustained.

2 THE COURT: Sustained.

3 Q. Well, do you have a lease at 29 --

4 THE COURT: Same question. The objection is
5 sustained. Ask a different question.

6 Q. Okay. In terms of your living situation you
7 do have a boyfriend, correct?

8 A. Correct.

9 Q. And when did you meet?

10 A. I met him in September of --

11 MR. GALLAGHER: Objection.

12 THE COURT: Overruled.

13 A. -- of 2023.

14 Q. Okay. 2023. And that is post divorce decree.
15 So you have met someone since?

16 A. Yes.

17 Q. Okay. So would you constitute introducing
18 someone new to Owen's life as a material change?

19 MR. GALLAGHER: Objection.

20 THE COURT: Sustained. That is for me to
21 determine.

22 MR. BARRY: I understand. I do kind of want
23 her opinion where she is coming from here.

24 THE COURT: No, not on a legal concept.

25 MR. BARRY: I understand.

1 Q. So in response, without you making some type
2 of legal conclusion, you have a boyfriend now, correct?

3 A. Yes.

4 THE COURT: You just asked that.

5 Q. You stay overnight sometimes with this person
6 or no? Have you had an overnight?

7 MR. GALLAGHER: Objection. Scope.

8 THE COURT: Overruled.

9 A. Yes.

10 Q. Regularly? Weekly? How frequently?

11 A. On the days I don't have Owen.

12 Q. On the days you don't have Owen. Has there
13 been an instance where overnight you have gone to see
14 your boyfriend instead of coming home while Owen has
15 been home?

16 MR. GALLAGHER: Objection.

17 THE COURT: Overruled. She just answered it.
18 You can answer it again.

19 Q. You are stating that --

20 THE COURT: Let her answer. The question was
21 has there ever been a time when you have had Owen when
22 you stayed overnight with your boyfriend?

23 THE WITNESS: Once or twice.

24 THE COURT: Next question.

25 Q. On -- has Owen ever stayed overnight with your

1 boyfriend?

2 THE WITNESS: No.

3 THE COURT: Has he ever been left alone with
4 your boyfriend?

5 THE WITNESS: Once, for like a half hour.

6 Q. On that instance where you had let him stay
7 alone with your boyfriend, where was that location that
8 he was alone with him?

9 A. We were hanging out at my boyfriend's house.

10 Q. And that is new for Owen to have been left
11 alone with another adult that he wasn't related to?

12 A. No.

13 Q. Okay. It wasn't?

14 A. No. He has been like to friend's houses and
15 stayed over at like Lucas' with Mr. Doug. He has been
16 to other places with other people before.

17 Q. And in terms of changes in Owen's life, have
18 you indicated that you would be changing your situation
19 to say move in or move him in?

20 A. Absolutely not. I have no intentions of
21 moving in with David. And honestly, I would not do
22 that to Owen or my mom.

23 Q. Okay. From like a change in circumstance, do
24 you feel Owen moving into a new home with me has caused
25 him any ill circumstance? So you are saying you moving

1 in with Dave would be bad for him, correct?

2 A. Because it would be a huge change.

3 Q. A burden to Owen?

4 A. Yes.

5 Q. Now, a move is a big change though. Since
6 2022 have you ever taken a vacation with just Owen
7 excluding your mother?

8 THE WITNESS: Yes.

9 MR. GALLAGHER: Objection.

10 THE COURT: Sustained. 2012 doesn't matter.

11 Q. 2022?

12 THE COURT: Since January of 2022.

13 A. Yes.

14 Q. You have taken solo vacations with Owen. Have
15 any of those vacations or have you made any attempts to
16 see Owen on his birthdays?

17 MR. BARRY: Objection. Scope.

18 THE COURT: Beyond what was asked. How is
19 that a change?

20 MR. BARRY: Well, a change simply is since the
21 decree my son hasn't seen his mother on his birthday,
22 which in terms of what I'm stating here --

23 THE COURT: Have you seen Owen on his
24 birthday?

25 THE WITNESS: That is actually very specific.

1 The divorce decree says that we get to share Owen on
2 his birthday. It falls in the summer in July. So I
3 simply just put it on Jeffrey's week so that, you know
4 --

5 THE COURT: So it is not disruptive.

6 THE WITNESS: So it is not disruptive.

7 THE COURT: You answered the question.

8 Q. Who is in charge of the summer schedule since
9 2022? Has that changed?

10 A. I have been in charge of it and I do my best
11 to follow the divorce decree.

12 Q. Okay. Has it changed since October how it has
13 been handled? The October of 2023 where the shift went
14 back to the JAD. Has the summertime arrangement
15 changed or have they stayed the same?

16 A. Well, it changed slightly that year because
17 the judge ruled that you had to give up a week of your
18 summer vacation to me to meet the change in days
19 because you were taking a vacation in February.

20 Q. Perfect. So Owen's summer did change. But
21 what you are alleging is that you are in control of
22 Owen's summer schedule per the JAD?

23 A. I write the schedule up and I usually
24 rerelease it in March, which is way before I have to
25 release it. And you have every opportunity to critique

1 it and you usually say it is fine.

2 Q. Well, I think that the material change --

3 THE COURT: Just ask a question. Don't argue

4 --

5 Q. Does the JAD or the decree state simply that
6 I'm in charge of the summer schedule?

7 MR. GALLAGHER: Objection.

8 THE COURT: It says what it says. And it is
9 not going to be the basis for a change.

10 MR. BARRY: Well, in terms of the who is in
11 charge of the summer schedule, I'm going back and forth
12 and making the essentially proposals.

13 THE COURT: The testimony was and she has
14 admitted what you are saying. She makes the schedule.
15 She sends it to you in March and you have not objected
16 to it. That was the last answer. Next question.

17 Q. Great. Understood. Do I ever send you my
18 schedule for the summer?

19 A. No, not your full schedule. You occasionally
20 request certain weeks. I think you have requested
21 certain weeks and certain days here and there.

22 Q. From 2022 to the 2023 October, that period of
23 time where we were working somewhat amicably, would you
24 say that I had some legal custodies of Owen in my
25 actions?

1 MR. GALLAGHER: Objection.

2 THE COURT: Sustained. I don't know what you
3 mean by that.

4 Q. I get how I have to ask these things. Are you
5 aware of any times where I have signed legal paperwork
6 for Owen that you essentially consented to or allowed?

7 A. I don't know what you are even referring to.

8 Q. Okay. You stated that for elementary school
9 and things, Owen was vaccinated for his base school
10 vaccines, things like that; is that correct?

11 A. Correct.

12 Q. Does Owen very currently have a vaccine
13 schedule or a vaccine exemption?

14 A. You had me sign vaccine paperwork. I'm sorry.
15 You wanted me to sign an exemption and I did for Owen.
16 But that did not grant you the ability to go around me.

17 Q. All right. And then I have -- I can hand
18 papers here to admit into evidence to ask you to look
19 at them, I believe, so I'm going to try that here.

20 THE COURT: Okay. Mark it. Show it to Miss
21 Schwender.

22 Mr. Barry, just so you know, this was set in
23 for a half day and it is now ten after 12. I'm going
24 to conclude the hearing at 12:30. So you have about --
25 let's just say 15 more minutes. So complete your

1 examination.

2 MR. BARRY: Okay.

3 MR. GALLAGHER: This has already been admitted
4 as Defendant's 6.

5 MR. BARRY: Okay.

6 Q. All right. Miss Schwender, I'm going to hand
7 you this.

8 THE COURT: Okay. This is Plaintiff's Exhibit
9 Number 6. What is the question? Excuse me.
10 Defendant's Exhibit Number 6.

11 MR. BARRY: Yes.

12 Q. Could you -- on the second page there is an
13 e-mail that essentially states -- some follow-up or
14 things that we were discoursing on. So you made the
15 statement that Owen is vaccinated originally. This
16 e-mail, if you can read, do you recognize what it is in
17 context to?

18 A. Yes.

19 Q. Okay. And on that second page, we were
20 discussing two things. What are those two things, like
21 two items, counseling and vaccinations?

22 A. Yes, counseling and vaccinations because this
23 is in regards to an e-mail from Miss Shurwin.

24 Q. Regarding his counseling, vaccination and
25 otherwise, would you say that predominantly it was you

1 reaching out to me to try to work with me for Owen's
2 interests or would you say majority of the time it has
3 been me making appeals to you?

4 A. I don't need Owen to be religiously exempted.
5 So it means nothing to me.

6 Q. Okay. So essentially what you are saying is
7 the child and his religion means nothing to you?

8 A. What religion are you?

9 THE COURT: Don't ask questions. Just answer
10 them.

11 MR. BARRY: I will be happy to go to the next
12 thing here. I would like to admit. This one does need
13 to be admitted into evidence here.

14 THE COURT: What is that? She can have the
15 copy that you have marked. What is it, Mr. Barry?

16 MR. BARRY: I would like to admit in Maryland
17 Department of Health and Mental Hygiene immunization
18 certificate or more specifically a religious exemption
19 for Owen Barry when it comes to -- (Inaudible).

20 Q. Do you recognize that exhibit that I put in
21 here, this immunization exemption?

22 A. Yes.

23 THE COURT: How is this a change, Mr. Barry?

24 MR. BARRY: Well, the change is simply that in
25 Owen's life and since then both I and my family have

1 become increasingly religious, in terms of our
2 practicing values. This, as you just heard, means very
3 little. The change in fact is with my son and my
4 context here.

5 THE COURT: All right. Keep going.

6 Q. I would also like to, just because I'm
7 explaining the entry of the exhibit here, it shows my
8 signature. Does this form show my signature, Miss
9 Schwender?

10 A. I believe so.

11 Q. Okay. Do you recall who signed this document
12 first?

13 A. I have no idea.

14 Q. Okay. In terms of initiating this form, is it
15 fair to say that it has been me that has sought most of
16 the accommodations for Owen?

17 A. Yes.

18 Q. Okay. In terms of his --

19 THE COURT: I will mark Defense Exhibit
20 Number 7. Is there any objection?

21 MR. BARRY: No objection.

22 THE COURT: It is admitted.

23 (WHEREUPON, the above referred to document was
24 entered in evidence as Defendant's Exhibit
25 Number 7.)

1 Q. In terms of Owen's status quo since the
2 divorce, has it been you or I that has made these types
3 of decisions for Owen related to state exemption or
4 school enrollment in majority?

5 A. I am the one who enrolled him in school and I
6 am the one who got him vaccinated and I am the one who
7 takes him to medical appointments. I signed this for
8 you but ultimately, I as a person with sole custody
9 currently get to make the decisions on whether or not I
10 feel that Owen needs to be vaccinated or not.

11 Q. Thank you. And the prior -- up to the
12 divorce, you are saying at some term of time you
13 handled Owen's vaccinations and things like that. Did
14 anything change in -- just say November of 2022 that
15 would have made you shift to allow me to make those
16 decisions?

17 A. You aren't making this decision. You brought
18 this before me and this was right out of COVID.

19 THE COURT: You answered the question. It is
20 much easier than that. Since January of 2022 has
21 anything happened that would in your opinion make it
22 better that Mr. Barry have legal custody and decision
23 making authority?

24 THE WITNESS: No.

25 THE COURT: Answered. Next question.

1 Q. Now, you say that religion matters very little
2 to you?

3 MR. GALLAGHER: Objection. We are now in the
4 Defendant's case. My case is closed. It wasn't
5 initially brought up and it cannot be brought up. It
6 is beyond scope.

7 THE COURT: I'm going to permit it. But Mr.
8 Barry, you have 10 minutes.

9 MR. BARRY: I understand the time limit.

10 THE COURT: You can ask a lot of things, but I
11 can tell you this issue isn't going to -- I don't see
12 anything so far that will suggest that this issue is
13 going to play a part in the decision. You can proceed
14 as you will.

15 MR. BARRY: I certainly hope that you weigh
16 things until the end and don't have something
17 predisposed in mind, Judge.

18 THE COURT: I do not.

19 Q. So you also stated something about moving
20 between addresses and there being appropriateness for
21 Owen's schooling. At the time of decree did you ever
22 approach the idea of a private school for Owen Barry?

23 A. We did, because you did not like Warren and we
24 were attempting to get him to be put into Mays Chapel.
25 I asked you about some of the private schools in the

1 area.

2 Q. Okay. And then at that point in time Mays
3 Chapel was his proper zoned school, correct?

4 A. It is the one that goes to his grandmother's
5 house, yes.

6 Q. And it has always been his proper zoned
7 school, yes?

8 A. If the physical -- sure.

9 Q. Okay. And materially, other than the moving
10 and changing addresses and materially, other than the
11 change to our arrangement for custody outside the
12 decree, is there anything else that has changed in your
13 life?

14 MR. GALLAGHER: Objection. Vague.

15 THE COURT: Overruled.

16 A. Not that I can really think of. We got a dog.

17 THE COURT: Next question.

18 Q. Okay. That is a fantastic one. As it relates
19 to the decree, of course it does extend out a little
20 bit past our son together. Is the family cat deceased
21 or alive?

22 MR. GALLAGHER: Relevance. Objection.

23 THE COURT: Overruled.

24 A. The cat is alive.

25 Q. Okay. That is all. And so are the family

1 dogs alive or deceased?

2 A. They had died.

3 Q. Okay. So that is another material change from
4 the JAD, correct?

5 MR. GALLAGHER: Objection.

6 THE COURT: Whether it is material is my
7 decision. It is certainly a change.

8 MR. BARRY: It is material, if you please.

9 Q. But in terms of the custody of the cat, have I
10 ever made a request to see the cat or have the cat in
11 any term of time? Have I made any mention of the
12 family cat to you through these proceedings? I would
13 just like to make this one a very five minute thing and
14 not come back to the cat but this is important.

15 A. You threatened me with the cat once.

16 Q. Threatened. Okay. Like throwing it at you?
17 Could you please identify specifics?

18 A. That you were going to go back to court to get
19 custody of the cat so that I would have to share the
20 cat with you.

21 Q. Okay. Do you have any evidence of any
22 threatening this cat issue and then I'm attempting to
23 get my cat burial rights where Owen has his dogs buried
24 in the family -- that is where I'm going.

25 MR. GALLAGHER: Objection.

1 THE COURT: Sustained. Completely beyond
2 this.

3 MR. BARRY: Okay.

4 Q. In terms of change to the situation -- there
5 is a situation where a pet is aging now, is that
6 correct? Still alive but aging?

7 A. I legally own the cat. Just to be clear.

8 Q. Sure. And it was a family pet. But it was
9 adopted by you?

10 THE COURT: Don't argue. Ask a question.

11 MR. BARRY: I understand that we are running
12 out of to time here.

13 THE COURT: Yes, sir.

14 MR. BARRY: In terms of last pieces of
15 evidence, I would like to get this admitted so it gets
16 put in today. This is my e-mail related to -- I know
17 it doesn't --

18 THE COURT: Plaintiff's Exhibit Number 8 and
19 what is it, sir?

20 MR. BARRY: This is my e-mail to the school
21 essentially related to hearing and vision. I know it
22 doesn't --

23 THE COURT: All right. Plaintiff's Exhibit
24 Number 8. And what is it, sir?

25 MR. BARRY: This is my e-mail to the school,

1 essentially requesting -- because it takes him out of
2 class and because I have a primary, you know, doctor in
3 terms of what I expect --

4 THE COURT: No. I asked what is it? You said
5 an e-mail to the school concerning?

6 MR. BARRY: Vision and hearing test.

7 THE COURT: Vision and hearing test.

8 MR. BARRY: Yup.

9 THE COURT: Any objection to that.

10 MR. GALLAGHER: To this document, no, Judge.

11 THE COURT: It is admitted.

12 (WHEREUPON, the above referred to document was
13 entered in evidence as Defendant's Exhibit
14 Number 8.)

15 MR. BARRY: I have last questions as we are
16 winding down.

17 Q. In terms of changes in Owen's behavior, since
18 -- originally Owen, you have alleged, needs to be in
19 counseling, needs to be in counseling and you,
20 yourself, also stated that you would be seeking
21 counseling and you were essentially emotionally
22 distraught; have you sought counseling?

23 THE COURT: For?

24 MR. BARRY: Anything.

25 THE COURT: For whom?

1 Q. For yourself. Have you been in counseling or
2 do you have proof of a payment to a counselor?

3 A. No.

4 Q. For Owen, do you have some proof of outside
5 counseling or things like that --

6 A. No.

7 Q. -- that you have gone and done that? Since
8 the decree, have you ever made a statement that you
9 don't need to buy clothes for Owen because I take care
10 of that?

11 A. I was referencing the fact that you bought him
12 like 20 T shirts and that I don't need to buy him more
13 than 20 T shirts because he already has enough and
14 since he grows out of them so quickly, he only really
15 needs the 20 T shirts that you have bought him. There
16 is no point in constantly buying him stuff that he will
17 outgrow and only wear once. I mean, he is a growing
18 kid. Some things he grows out of faster.

19 Q. Got it. Since introduction of the cell phone,
20 are you aware of any times where Owen has texted me
21 requesting I bring him something or I fix something or
22 I do something for him?

23 A. I honestly do not look at his cell phone or
24 the text messages to you.

25 Q. Okay. For the record, I don't look at his

1 phone either. I will just add a question there. So
2 you are not aware. Are you aware that I have driven
3 multiple times to bring medicine, other things to Owen
4 while you have been at work?

5 A. Um, I was not aware that you were randomly
6 showing up at my house.

7 Q. Not randomly. Have you been aware that Owen
8 has stayed up much later than even a 9:30 bedtime?

9 A. Um, he is nine now and we put him to bed at
10 9:15 and if he is not sleepy because you fed him a Red
11 Bull or something --

12 Q. Which term? He lives full time term with you,
13 custody.

14 A. So on Wednesdays he is with you.

15 Q. Are you feeding him Red Bull at nights?

16 A. No.

17 Q. Well, are you aware that Owen is sneaking out
18 at night and downstairs?

19 A. I was not aware that he was doing that.

20 Q. Okay. Would your mother be aware?

21 A. I don't think that she is because she would
22 have told me.

23 Q. Well, does your mother, who is watching him
24 most times, is she a heavy sleeper?

25 MR. GALLAGHER: Objection.

1 THE COURT: Overruled.

2 Q. Last one. Have you moved your physical
3 bedroom since the decree?

4 A. Yes.

5 Q. Okay. Was there a reason why you moved your
6 physical bedroom? Was there a stated reason in the
7 house why you moved your bedroom? What was the reason?

8 MR. GALLAGHER: Objection.

9 THE COURT: Overruled.

10 A. So I would have more space.

11 Q. Has it ever been mentioned -- were you aware
12 that your coming in and out of the house all night was
13 causing noise issues and problems with the sleep habits
14 of the folks in your home?

15 MR. GALLAGHER: Objection.

16 THE COURT: Sustained. You have got
17 two minutes.

18 Q. Okay. So where was your room at the beginning
19 of the decree? Where did you live in --

20 A. Upstairs.

21 Q. Where do you live now?

22 A. In the basement.

23 Q. Where does Owen live?

24 A. In the same room that he always has had, the
25 one at the top of the stairs.

1 Q. Did you used to live in Owen's room?

2 A. No.

3 Q. Did Owen used to live full-time in your room?

4 There was a period of time where you did not have a
5 bedroom at all in your mother's house?

6 A. Yes, but by the time of the divorce decree I
7 had my own bedroom.

8 Q. Was there something that precipitated that,
9 your own consciousness?

10 THE COURT: Sustained. I just made an
11 objection. Sustained. Because if it was before the
12 divorce decree, it doesn't count. So talking about
13 since January of '22, she has moved her bedroom from
14 upstairs to the basement?

15 MR. BARRY: Okay. Also admitted that she
16 changed the amount of time that she is in the house and
17 --

18 THE COURT: One minute.

19 Q. Do you admit that you were asleep when I got
20 to the school the other day for Owen, that you had not
21 been prepared to pick him up that day, with the school
22 being let out early?

23 A. I was prepared to pick him up that day.

24 Q. Were you at the school when school was let out
25 that day?

1 A. Yes.

2 Q. Where?

3 A. I'm not even sure what day you are in. But I
4 haven't missed a single day picking him up.

5 Q. So on Friday?

6 A. I have never been late picking him up.

7 THE COURT: Don't argue. She has answered the
8 question.

9 MR. BARRY: She has not.

10 Q. On the Friday where there was an early school
11 release, were you at the school physically to pick Owen
12 up at the early release time, yes or no?

13 A. What, last Friday?

14 Q. The early release time. Very recently this
15 month I texted you that school was getting out early
16 and then I texted you while standing in front of his
17 classroom. Were you at the school or were you at home
18 having just woke up?

19 A. I do wake up at 3 to pick up Owen at 3:30.

20 THE COURT: This -- that is the last question.
21 I'm going to conclude your examination.

22 MR. BARRY: Thank you.

23 THE COURT: All right. Any redirect?

24 MR. GALLAGHER: No, Judge. Thank you.

25 THE COURT: Okay. Miss Schwender, thank you.

1 You can step down. All right. I will give you
2 two minutes, Mr. Barry, to wind up and tell me why
3 there are material changes in circumstances with what
4 the evidence has shown. Okay?

5 MR. BARRY: Well, the circumstance since the
6 decree has absolutely changed and the fact that from
7 day one of the decree Miss Schwender and myself never
8 followed the schedule or any of the boundaries that
9 were written into the JAD. We attempted together,
10 which was always facilitated by me having no rights to
11 my son; I am always in the position of the one having
12 to make an appeal on his best behalf when there is
13 something that I feel would be in his best interests.
14 Since then, the only thing that has stayed consistent
15 in Owen's life is my dedication to him and his best
16 outcomes. The changes have been erratic with Owen's
17 mother changing her work schedule, which is not a fixed
18 schedule. I believe she could change dates week by
19 week if she wanted or maybe that is not true. His
20 situation with --

21 THE COURT: How is the change in her work
22 schedule from six overnights to four been detrimental
23 to Owen?

24 MR. BARRY: The fact that she works overnight
25 is absurdly detrimental.

1 THE COURT: No. But the change?

2 MR. BARRY: The change where it goes from six
3 to four is, again, it is a case at the very minimum of
4 voluntary impoverishment. So I will reference just the
5 text message where she says a vulgarity, she can live
6 off of the child support. I will also make a statement
7 that she has been investigated in terms of the child
8 support she is receiving, that she was receiving
9 erroneous amounts, listed as spousal support. So now
10 --

11 MR. GALLAGHER: There is no evidence of that,
12 Judge.

13 THE COURT: You talked about a variation from
14 the --

15 MR. BARRY: And then she also stated in the
16 very same text I might lose a good job. So a change
17 from six down to four. If that could lose her a good
18 job would be a huge risk to my son. It is completely
19 voluntary and doesn't have to happen. Owen should have
20 two parents that work full-time. Owen should have a
21 parent in the house that doesn't work outside of the
22 house. No reason my son should be left in the care of
23 anyone except one of his natural caretakers. I believe
24 that is me. And then if his mother were available, I
25 would have maybe a different story of requesting 50/50

1 or some restoration to reasonableness for my son's
2 sake, who loves his parents. It is not his fight.
3 However, the actual circumstantial changes here warrant
4 a full custody where Owen can have me in the home and
5 he can have a parent available at all times without
6 having his access broken or restricted to the other
7 side of the family.

8 I know we will get into merits of that if this
9 case proceeds from here, but in terms that there has
10 been substantial changes, in addition to that, his own
11 school zone and district, the County has made changes.
12 Whether or not Owen has moved, this Court could simply
13 support the Plaintiff's fraud in terms of these are all
14 basic things that every other citizen has to comply
15 with or face fines or some detrimental outcome. In my
16 son's case, we aren't an exemption. I believe I should
17 be supported through these changes in Owen's life by
18 increased custodial duties as his father. I am the
19 correct party to make these changes on time. Owen
20 would not be in his case where he is enrolled
21 fraudulently. He would not be in a case where he is
22 emotionally starved of another parent and not be in a
23 case where if he makes an expression of I don't want to
24 play soccer, I would like to do something else, like
25 hiking with dad, where he would be punished for that.

1 Owen has climbed three mountains with me. If I had
2 full custody of him by the end of his tenth year he
3 would be a Saranac Sixer and then he would be
4 continuing on to hike the Adirondak 46 peaks and other
5 things in his life.

6 As of right now I'm stuck going back and forth
7 about hours and minutes with my ex wife. Materially
8 there would be no argument at the beginning of the JAD
9 about these Wednesday night drop offs because I simply
10 wouldn't be dropping him off Wednesday night. There
11 was another arrangement that pickups and drop offs were
12 facilitated around school only. And that was also for
13 reduction in conflict.

14 So the other substantial changes, the
15 Plaintiff going back to the JAD has essentially tried
16 to enforce conflict by having us interact much more
17 frequently than we ever need to. Pickups and drop offs
18 around school used to be the norm and it is no longer.

19 THE COURT: All right.

20 MR. BARRY: I just want to get through this
21 part with the change. I would like to move on to the
22 next part if that is where we are headed.

23 THE COURT: All right. Thank you. Counsel?

24 MR. BARRY: Judge, I don't think anything that
25 has been stated rises to the level of a material

1 change. I'm trying to keep track of every single one
2 of them. I don't think the child's shoe laces amount
3 to a material change. I don't think the child dressing
4 himself in a shirt that his dad got for him amounts to
5 material change. I don't think the fact that the
6 Defendant does not like or thinks that the Court's
7 custody order was inappropriate amounts to a material
8 change.

9 I went through the major issues that were
10 outlined in his petition to modify. And we have seen
11 the same issue or if it is a change, it is a change
12 that further and deeply entrenches the Court's order
13 with respect to overnights that Mom may be working.

14 Specifically we haven't heard that there is
15 any pending issue whatsoever pertaining to the child
16 being unenrolled from Warren Elementary and if there
17 is, it is cause because the Defendant caused it. We
18 haven't heard that there has been any decrease in
19 friends that would be appreciable whatsoever as was
20 pled. We haven't heard anything that amounts to abuse
21 or neglect under 5-701 of the Family Law Article
22 relating to neglect of the child based on what the
23 Defendant might have alleged.

24 If there is overnight work, it has been
25 reduced. That was already contemplated by the Court.

1 And if it is reduced, that is for the child's benefit.
2 Even if it was a material change, it is not going to
3 affect what the Court might do with respect to custody
4 on the second aspect, second prong of this analysis.

5 The fact that the parties have flexibility in
6 the Court order relating to custody is I think what the
7 Courts expect in a Family Law case and the parties
8 should be commended for trying to work it out and the
9 fact that they then abided with the court order for
10 over a year shows that there has not been a change for
11 over a year and to the extent there was flexibility,
12 again, it is expected and not a material change.

13 For this and other reasons, I don't believe
14 that there is one. The Court has seen other evidence,
15 other testimony. I believe it was exactly the same
16 that the Court received over the three day merits trial
17 back in 2021 and 2022. I think the Court came up with
18 a judicious decision previously and that was based upon
19 the fact that these parties cannot work together for
20 various reasons and so the Court, unfortunately, is put
21 in a position where the Court has to make a decision
22 and the Court made a decision and there has been no
23 deleterious effect on the child for being placed in
24 Mom's care, other than the child has normally grown and
25 as far as I can discern from the testimony, nothing

1 outside of the bounds of what is normally expected or,
2 frankly, allowed under the umbrella of what my client
3 is allowed to do pursuant to the Court's order giving
4 her custody.

5 For those reasons I would ask the Court to
6 deny the petition to modify based on a failure of proof
7 on the part of the Defendant.

8 I will submit. And then very briefly, there
9 is a pending motion on Saint Kasimir's and also on
10 attorneys fees never paid pursuant to the Judgment For
11 Absolute Divorce.

12 THE COURT: Okay. Dealing first with the
13 petition for modification that was filed by Mr. Barry.
14 As has been said a number of times throughout this
15 hearing, the Court's analysis is a two step process.
16 The first is whether there was in the first instance a
17 material change in circumstances; and secondly, if
18 there was, then the Court engages in a best interests
19 of the child analysis pursuant to the Sanders and
20 Taylor factors.

21 So evaluating the first issue. Mr. Barry has
22 raised a number of issues much of the time, to be
23 candid, really did not go to that factor. But because
24 it was important to Mr. Barry, I permitted it. But if
25 I could boil it down to perhaps four or five points

1 that he raised that at least were within the context of
2 a material change of circumstances, I will address
3 those at this time.

4 The first is that Miss Barry -- Miss
5 Schwender's work schedule is such that she has changed
6 in a way that she is out at night and is unable to take
7 care of Owen. The uncontradicted testimony was that
8 she at the time of the divorce decree was working six
9 overnights per week and now is working four overnights
10 per week, which permits her to be home more frequently,
11 not less frequently. And thus could not possibly be a
12 detriment to Owen in the manner which Mr. Barry has
13 described.

14 Mr. Barry addressed the fact that he has
15 changed residences. And that as a result, he has been
16 able to produce a nicer environment for Owen, that he
17 has -- Owen has, as Mr. Barry described it, a nicer
18 room and has his own bathroom, both of which are very
19 nice upgrades for Owen and I'm sure makes his life
20 easier there. But it is not the kind of significant
21 change that would warrant a change in the custody
22 order. He still lives in Baltimore City; resides with
23 he, Mr. Barry, lives in Baltimore City, resides there
24 with his fiancée' and every other week his fiancée's
25 daughter. That really isn't a change from where we

1 were in January of 2022.

2 The third issue raised by Mr. Barry dealt with
3 the fact, he complained that Owen doesn't have any
4 friends and that Miss Schwender discourages any
5 relationships with friends. Her testimony, and she
6 named names, individuals who were friends with Owen and
7 that he has been able to maintain those friendships.
8 The only problem was that he had signed up for soccer
9 and for reasons I don't really need to get into great
10 detail on, he was not going to practice and whether he
11 had told Mr. Barry did not want to play soccer or told
12 Ms. Schwender he wanted to, really doesn't change the
13 fact his fundamental friendships and relationship has
14 not been altered in a material way since January of
15 2022.

16 The issue was raised as to Owen's school
17 enrollment at Warren Elementary. My recollection is
18 this exact issue was raised at the time of the hearing.
19 That has not changed in any way. And on top of that,
20 Miss Schwender's testimony was that she had spoken to
21 the Baltimore County Public Schools, had advised them
22 of this issue, that in '23 or '24 and they were
23 perfectly content with leaving things as they were.

24 The final issue is, and this was agreed to by
25 Miss Schwender that following the filing of the divorce

1 decree and the custody schedule in that, the parties in
2 an effort to frankly benefit Owen and to make things
3 easier for themselves, were more flexible in adherence
4 to the schedule, which is not at all, outside of what
5 the Court would hope, unless it becomes a conflict and
6 they could no longer agree. And that is exactly what
7 happened in October or November of 2023 when Mr. Barry
8 sought to expand the schedule on a continuing basis
9 rather than trying to give and take here or there and
10 it was at that time Miss Schwender decided to fall back
11 to the letter of the order itself and to adhere to that
12 since that time.

13 So it is important to recognize that a
14 schedule and an order such as this is important. It
15 provides structure for the parties and for Owen to try
16 to live within. And it ought not be modified easily.
17 That is why there is a requirement that there not -- it
18 may not be -- it must be more than simply some change.
19 There must be a material, significant change. And in
20 this case, a highly contentious relationship between
21 the two parents was then and remains so and has been as
22 big an impediment to Owen's well-being as anything, but
23 that has remained a constant. There have been
24 excursions from the schedule that I described. There
25 have been occasional changes in Owen's activities and

1 friendships. Mr. Barry has moved residences. But none
2 of these things in my view amounts to a material change
3 of circumstances which would require a reordering of
4 the custody schedule that the Court first put in place
5 in January of 2022.

6 And for that reason, I will deny Mr. Barry's
7 motion -- petition for -- to modify custody. With
8 that, he has filed, as I said earlier, a motion
9 addressing what is essentially a matter of legal
10 custody. He asked that he attend a shadow day at Saint
11 Kasimir's school in Baltimore City. I leave that -- as
12 I said, I'm leaving the order in place.

13 Legal custody at this point is with Miss
14 Schwender and she has made a determination after
15 consultation and there is a lot of evidence of
16 communication, that Owen's best interests are showed by
17 staying at Warren Elementary. So for that reason I
18 will deny the motion, untitled as it is, which is filed
19 by Mr. Barry on December 18th of 2024.

20 The only remaining issue is the motion for
21 judgment which seeks the entry of a money judgment
22 based on a failure to pay moneys due under the prior
23 order. I will hold that and I will rule on it without
24 further hearing.

25 That is the -- those are the Court's rulings

1 on the open motions. I think have I addressed all of
2 those. Thank you all very much. All I can say again
3 is to try to encourage you to get along with one
4 another. Mr. Barry, I'm still speaking.

5 MR. BARRY: I appreciate your time. I do have
6 to be on my way as well.

7 THE COURT: All right.

8 MR. BARRY: Very sad for Owen --

9 THE COURT: The hearing is over.

10 (Conclusion of Hearing.)
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RESPONDENT'S APPENDIX G

Entered: Clerk, Circuit Court for
Baltimore County, MD
January 16, 2025

E-FILED; Baltimore County Circuit Court
Docket: 12/23/2024 6:21 PM; Submission: 12/23/2024 6:21 PM
Envelope: 19304676

AMY SCHWENDER

Plaintiff,

v.

JEFFREY F. BARRY

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. C-03-FM-20-003949

Denied - motion does not present
a sufficient legal or factual basis
for the relief requested.

Dirk P.
15th of January, 2025

* * * * *

DEFENDANT MOTION TO Administrative Judge TO TRANSFER VENUE

I, Jeffrey Francis Barry (Defendant), *Pro Se*, move that the court Administrative Judge rule and compel a transfer of venue for Case No. C-03-FM-20-003949,

there is no tangible reason here or in any other case that under unbiased non-exigent circumstances where 'in order to avoid an appearance of impropriety in matters' or for a reason of convenience of parties and on the following grounds of Rule 2-327 - Transfer of Action (c) Convenience of the Parties and Witnesses, that the County Court would not transfer expediently Defendants Petition for Custody and all case matters so that no further Clerical delays burden due process of a Defendant.

1. Rule 2-327

Pursuant to Rule 2-327 - Transfer of Action

"(c) Convenience of the Parties and Witnesses, On motion of any party, the court may transfer any action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice."

In this instance of Schwender vs. Barry, it has now been since December 4th 2024 (19 days) equaling a Majority of a Calendar Month now of delay from Clerk / Judge / or Assignment Office to take a routine action of Summons pursuant to Rule 2-114 & Rule 3-114.

Plaintiff's place of employment is conveniently located in the same ZIP CODE 21224 as Defendant / minor child's Baltimore City place of residence, these locations are approximately 10 minutes in distance apart *by car*.

2. Rule 1-321

Rule 1-321. Service of pleadings and papers other than original pleadings

"(e) Proceedings to modify judgment in a civil action. — If a motion, petition, or other paper that initiates proceedings to modify a judgment in a civil action is filed more than 30 days after entry of the judgment, it shall be served, together with a summons issued pursuant to Rule 2-114 or 3-114, as applicable, in accordance with the rules for service of an original pleading."

To Proceed in Baltimore City is the only outcome in the interests of fair and impartial justice. The Clerk is at fault for mishandling of Defendants Petition, leaving potential for an immediate appeal-ability against Defendant where the Baltimore Circuit Courts own Negligence would be a liable cause.

AB
12-23-24

RESPONDENT'S APPENDIX G

Defendant requests transfer for convenience. Transfer is in the interests of fair and impartial justice where the December 4th filed petition will not be impeded by a malpractice of the County Court.

3. Recapitulating

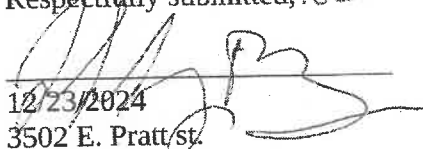
The major aspects of petition for amendment and custody of Owen Barry are all centered in Baltimore City where Owen would attend 5th grade and where Defendants home address is current and stable whereby making Baltimore City Circuit Court more convenient for defendant to proceed in as a eligible venue serving more conveniently appropriate Justice.

The Baltimore County Clerks Office has made no independent effort to correct its error on defendants reporting questions now since December 4th 2024 (19 days) equaling a Majority now of a Calendar Months delay for a routine action of a standard form pursuant to Rule 2-114 & Rule 3-114, this violates a 14th amendment right to due process of Defendant. A Transfer to Baltimore City would allow convenience for the motioning/petitioning party to access courthouse services, and would alleviate County Court of its plain liability it has caused to both sides of justice in its error,

**WHEREFORE the Defendant Jeffrey F. Barry conveys hope this Courts better efforts will,
GRANT EXPEDIENTLY this Motion to Transfer Venue, and
GRANT any other relief to Defendant it sees fit.**

I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.

Respectfully submitted, *to correct deficiency*


12/23/2024

3502 E. Pratt St.

Baltimore MD, 21224

jfbarry87@gmail.com // +1.667-212-8422

Certificate of Service,

I HEREBY CERTIFY that on this 23rd day of DECEMBER, 2024, a copy of the foregoing document was served via being mailed first class, postage pre-paid upon:

Amy Schwender

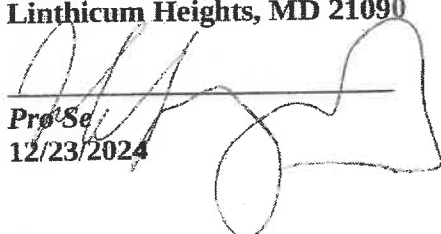
29 Spring Glen Court

Cockeysville, MD 21030

Hunter Gallagher

999 Corporate Blvd., Suite 100

Linthicum Heights, MD 21090


Pro Se

12/23/2024

☐ Mark this box if this form contains Restricted Information.

CIRCUIT COURT FOR Baltimore County, MARYLAND

City/County

Located at 401 Bosley Avenue Towson, MD 21204 Telephone +1-410-887-2139

Court Address

Case No. C-03-FM-20-003949

Amy K. Schwender

Plaintiff 1

29 Spring Glen Court

Street Address

Cockeysville, MD 21030

City, State, Zip

410-733-5800

Telephone

schwender8@hotmail.com

E-mail

Plaintiff 2

Street Address

City, State, Zip

E-mail

vs.

Jeffrey F. Barry

Defendant 1

3502 E. Pratt St.

Street Address

Baltimore, MD 21224

City, State, Zip

667-212-8422

Telephone

jfbarry87@gmail.com

E-mail

Defendant 2

Street Address

City, State, Zip

E-mail

Telephone

PETITION TO MODIFY ☒ CUSTODY ☒ VISITATION (CHILD ACCESS)

(Md. Code, Family Law Art., § 1-201)

If this submission contains Restricted Information (confidential by statute, rule or court order) you must file a Notice Regarding Restricted Information Pursuant to Rule 20-201.1 (form MDJ-008) with this submission, and check the Restricted Information box on this form.

NOTE: Use this form if you are a party in a court order for child custody or visitation (child access) and you want the court to change it. If you need a copy of that order, ask a court clerk. Attach a completed Civil Domestic Case Information Report (CC-DCM-001). You must "serve" the other party(ies) with a copy of this paperwork. See General Instructions (CC-DRIN) for information on service of process, filing fees, and other topics. Also see Maryland Parenting Plan Instructions (CC-DRIN-109) and Maryland Parenting Plan Tool (CC-DR-109). Visit mdcourts.gov/custody and mdcourts.gov/parentingplans.

I/We, Jeffrey Francis Barry, state that:

Your name(s)

1. I am/We are the
- ☐
- mother
- ☒
- father
- ☐

Relationship (for example, aunt, grandfather, guardian)

of the following minor child(ren):

Name(s)	Date(s) of birth
Owen Jeffrey Barry	7/13/15

RESPONDENT'S APPENDIX H

Case No. C-03-FM-20-003949

2. On 1/12/22 the Circuit Court for Baltimore County (CC)
Date of most recent court order City/County
 issued an order in case number C-03-FM-20-003949, granting custody of the child(ren) to
Amy Kathleen Schwender and visitation to
Name(s) of person(s) with custody and relationship to child(ren)
(self) Jeffrey Francis Barry, Father
Name(s) of person(s) with visitation and relationship to child(ren)
3. Since the most recent court order, circumstances have changed and the order is no longer in the best interest of the child(ren) because:

Mother fraudulently enrolled Owen outside of his proper Zoned school, perjuring address. Owen has asked for me (Dad) to take over his activities and scheduling from his mother. Owens access to friends is limited at his mothers. His emotional health and hygiene is worse in his mothers care. Owen's Mother recently began working full-time overnights (7pm-7am shifts), leaving before Owens bedtime, and is often not home at regular exchange times, on information and belief Amy is sleeping during daylight hours where Owen is not being attended by her and Amy indicates she is now living between addresses - Owen is asking to move in with me, Dad In 2023 I, Father, had Owen for a total of 107 Overnights, collected/dropped off Owen to/from School, per § 12-201. Definition of Shared physical custody Mom's sole custody is incorrect.

4. I/We know of the following cases, or I/we have been involved (as a party, witness, etc.) in the following cases about me/us, the other party(ies), or the child(ren). *Include cases such as custody, child support, guardianship, domestic violence/protective order, paternity, divorce, visitation (child access), CINA, delinquency, termination of parental rights, adoption, or other cases.*

<u>Court</u>	<u>Case No.</u>	<u>Kind of Case</u>	<u>Year Filed</u>	<u>Result or Status (if you know)</u>

Attach the most recent court order for these cases.

FOR THESE REASONS, I/we request the court change custody and/or visitation (child access) as follows (state the changes you are requesting):

Modify Decree as follows: -Revoke Mothers Sole Legal and Physical Custody of Owen Barry.
 -Grant Father Sole Legal and Physical Custody of Owen J. Barry, age 9
 -Grant 'interim exception' temporarily for Owens current attendance at Warren Elementary.
 -Grant Father right to enroll Owen for 5th grade Year in St. Casimirs Catholic School tuition covered by \$1,795.00/m Child support being currently paid to Mother until OSCE Modification.
 -Grant Mother scheduled visitation summers and alternating weekends during the daylight hours based on her inability to be in the home overnight (her ~7pm- 7am work schedule),
 -Add Alternating School's Spring Break and other regular School Calendar Events as well as February Winter Vacation with Dad, and a floating vacation with Mom be taken into account in custody language, these are major gaps currently missing from the standing Custody Order
 -Add 'First Right of Refusal' Clause for Both Parents regarding all Custody aspects which ensures the Order contains a common sense flexibility in the best interests of Owen Barry.

and order any other appropriate relief.

RESPONDENT'S APPENDIX H

Case No. C-03-FM-20-003949

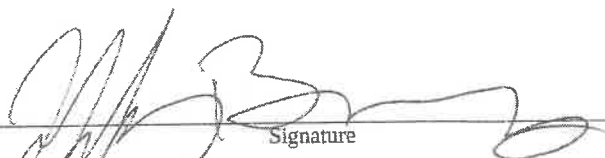
☒ I/We also request a change in the current child support order.

If parents' combined gross monthly income (before taxes/not take home pay) is \$30,000 or less, attach Financial Statement (Child Support Guidelines) (CC-DR-030); if combined gross monthly income is more than \$30,000, attach Financial Statement (General) (CC-DR-031).

I/We solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my/our knowledge, information, and belief.

12/3/24

Date



Signature

Jeffrey Francis Barry

Printed Name

3502 E. Pratt St.

Street Address

Baltimore, MD 21224

City, State, Zip

+1-667-212-8422

Telephone Number

jfbarry87@gmail.com

E-mail

Fax

Date

Signature

Printed Name

Street Address

City, State, Zip

Telephone Number

E-mail

Fax

AMY SCHWENDER	*	IN THE
Plaintiff,	*	CIRCUIT COURT
v.	*	FOR
JEFFREY F. BARRY	*	BALTIMORE COUNTY
Defendant.	*	Case No. C-03-FM-20-003949

* * * * *

DEFENDANT MOTION TO CHANGE VENUE

I, Jeffrey Francis Barry (Defendant), *Pro Se*, move that the court grant the following request in the above-referenced matter for a change of venue on the grounds of RULE 3-326 - TRANSFER OF ACTION (a) Improper Venue, for the likelihood of prejudice against myself due to held personal & working relationships of Kathy Schwender, a (15) year current employee of the Circuit Court, maternal grandmother of Owen Barry age (8), mother of Amy Schwender, Plaintiff.

Judge Keith Truffer disclosed in open court to knowing Kathy "very well" yet the presiding Judge failed to further recuse himself or seek any form of uncoerced waiver for presiding, My ex-mother-in-laws direct Boss Judge Cox was assigned to my case initially, after nearly 6 months of delays by my ex-mother-in-laws transitional Boss Judge Jakubowski holding direct authority to stall Judicial assignment, preventing motions from being brought for action. The most basic guidelines set by the Maryland Judicial Ethics Committee and Maryland Rules for avoiding impropriety.

Keith Truffer and The Baltimore County Circuit Court have violated my 14th Amendment right, robbing me of the full life I & my Son would otherwise enjoy together unhindered, taking my liberty and my pursuit of happiness, causing loss of custody my Son Owen Barry from me without a fair trial, blindly awarding custody and relief to Kathy Schwender by proxy of fact her daughter, Plaintiff lives with her mother.

1. Avoiding the Appearance of Impropriety

I aver Maryland Rule 18-101.2 provides:

(a) Promoting Public Confidence. — A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

(b) Avoiding Perception of Impropriety. — A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

I aver Maryland Rule 18-101.3 provides:

that "[a] judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."

I aver Maryland Rule 18-102.2 provides:

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3/4/24
1087

requires that "[a] judge shall uphold and apply the law and shall perform all duties of judicial office impartially and fairly."

I aver Maryland Rule 18-102.11 provides in part:

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or party's attorney, or personal knowledge of facts that are in dispute in the proceeding.

2. Perception of Institution-wide Judicial Prejudice

I aver Owen Barry (8) has resided with his mother Amy (Plaintiff) in Kathy Schwender's home since the beginning of my separation from Amy. Kathy acts as the 'head of household' as the property owner and is otherwise the provider also for her daughter Amy Schwender, who is a weekly regular at "High-Tops Bar and Grille." Amy maintains a "red-eye" lifestyle spending weeknights in bars regularly, and working midnight shifts at Amazon, sleeping during day hours. I aver Owen has spent scheduled school days off in the care of his Grandmother, who then takes him to work.

I aver further, during proceedings in 2021, whereas, despite myself presenting no presence of risk, threat of harm to the Plaintiff or her mother, or any evidence to such, I simply sought time with my Son, that access and overnights be regular and fair. Kathy initiated without material grounds a Peace/Domestic Violence Order against me, with further Court Protective Orders signed by Ruth Anne Jakubowski advancing Kathy's daughters goals of legal fraud, done without fair trial and this was possible due to the more than 'de minimus' relationship directly to Judges and Courthouse resources that enabled Kathy.

I aver Ruth has violated Maryland Rule 18-101.3 (a) and whether Ruth was aware of the intended fraud of Kathy and her Daughter or not, a one-sided action was taken in the form of a Court Order that otherwise was a followed-up-on threat made by Plaintiff, Amy, she would file on a false grounds 'where her mother works,' to make sure that 'I would not see my son again.'

I aver this order was taken out after Plaintiff emotionally traumatizing my son, following Plaintiff **denying Owen Barry (then 6) Winter Vacation** with Dad in 2021, aided by courthouse delays to basic assignment and scheduling that in any reasonable mind would appear in the stated interest to "delay", whereas Kathy/Amy intended I would "never see Owen again."

I aver Ruth was formerly the head Administrative Judge during the period relevant to this case for whom Kathy worked for directly in a transitional capacity of Court House Administrative duties to Ruth alongside her duties post-retirement of Cox as Judicial Assistant to now Judge Stacy Adams.

I aver Ruth replaced retiring Judge Kathleen Gallogly Cox in early January/February of 2022 and Kathy was a Judicial Assistant to Judge Cox, who was assigned as the Judge over my child custody/divorce settlement scheduled for 8/18/21.

I aver my case was subjected to severe and unwarranted scheduling delays that prevented my substantive access to my Son for what turned into hundreds (100s) of days in what ultimately amounted to a full calendar year of my Son Owens life stolen from me by violation of due process, causing emotional harm to both myself and my Son.

1/13/24
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The one sidedness, and wrongful relief granted to the plaintiff has violated Maryland Rule 18-102.2(a), I aver delays and rulings were carried out threats against Defendant, consistently favoring Plaintiff in a blind fashion, and ultimate judgments reflect motivated reasoning by Keith Truffer.

I aver Kathy's relationships are pervasive enough through-out Baltimore County Circuit Court her employment status has been lent to the Plaintiffs cause in material ways. Kathy's personal cell phone was brought to my home on Lombard St. to me by my Son in 2021, Owen (then age 6) said his mother told him I could 'fix grandma's phone' for him to use, which I was able to do.
referenced exhibits to Exhibits – Judicial Impropriety, ex6-cavanaugh.pdf, ex7-dugan.pdf, ex8-turnbull.pdf, ex-9-Kschw-and-cox.pdf, Ex-10-fiesta_judge.pdf

I aver before Judge assignment I had already reached out seeking my ex wife be held accountable for lying, committing perjury, defamation, and child abuse, otherwise also carrying forward with threatened actions of relying on Judiciarys Impropriety for relief.

For Reference, Exhibits Judicial Impropriety ex1 2-24-21 Sought-Investigation-before-assignment.pdf

NOTE: Response was sent on 2-24-21, my request occurred long prior having dealt with "assignment" office for months at this point.

Judges and Staff of Baltimore County Court House should be held accountable for violations of my 14th amendment right and MD Code, being the direct cause of wrongful emotional trauma to myself and Son.

For Reference, Exhibits Judicial Impropriety ex3 2-25-21 Ruth Protective Order.pdf

For Reference, Exhibits Judicial Impropriety ex4 2-26-21 Ruth Assigns Cox.pdf

For Reference, Exhibits Judicial Impropriety ex5 3-31-21 cavanaugh-assigns-truffer.pdf

I aver Kathy's discarded phone was found to contain personal numbers of Judges, Courthouse staff, as well as photos of multiple cakes Kathy Schwender baked for various Baltimore County Circuit Court Judges retirements, including: Dugan, Cavanaugh, Turnbull, and one (1) identifiable fiesta goer, Judge Cox, who may have been partying to the beat of her own Conflict of Interest in presiding over Nicole Rush, Plaintiff's attorney at the time, as well as distastefully **celebrating on the 5th of May in a Sombrero. Both facts reduce confidence in the integrity and good Judgment of this circuit court.**

I aver that Judge Cox and Ruth Jakubowski have both lent their office's prestige to the Plaintiffs cause by proxy due to a greater than '**de minimus**' relationship of Kathy Schwender to each.

I aver, Plaintiff Amy's initially retained lawyer, Nicole Rush, was solicited for the relationship of her mother as Nicole Rush clerked for Kathleen Gallogly Cox, Kathy was also a former employee of Turnbull & Associates, Nicole's temporary employer at the time. Nicole's work overlap as a Clerk working alongside Kathy stems from 2015 – 2016.

I aver, just the fact of assignment of Judge Cox to the 8/18/21 hearing violated to the letter Maryland Rule 18-102.11 (a) (1), the conflict of interest was menacing to myself the Defendant in the context of Maryland Rule 18-101.3 (a) whereas Judge Cox never recused herself, she waited instead to

JB
3/14/24
307

RESPONDENT'S APPENDIX J

retire and threats by the Plaintiff were carried out by proxy of The Baltimore County Circuit Courts assignment track. All added to by the fact Amy's Mother worked directly for Kathleen G. Cox.

For Reference, Exhibits Judicial Impropriety ex4 2-26-21 Ruth Assigns Cox.pdf

I aver, Plaintiff Amy's current lawyer, Hunter Gallagher, clerked for Stacy Adams, with work overlap alongside Kathy from 2021 – 2022. Hunter Gallagher claimed in open court to having met my Son without giving further context, I aver it can be presumed simply this occurred during Hunters time as a Clerk where Kathy would have been babysitting Owen her grandson while she was physically at work in the Courthouse / Chambers offices such that Amy could sleep off her "red-eye" lifestyle during daylight hours neglecting to provide a full attention to care of minor child (8).

This babysitting at the Courthouse was done so rather than promoting the rightful custody of me, Owens capable, asking, loving Father, to hold normalized custody my son – the emotional trauma of alienation was retribution for divorce from Amy. Plaintiff Amy continues to hold grudge this Court has blindly supported.

I aver, the pattern of actions of the Plaintiff taunting Defendant show that Kathy Schwenders work/personal status to this venue has aided her daughter, including contributing to the factors of alienation and fraud that took place from March 2020 until February 2022 that relied upon the prestige of Kathys employment for such great suspensions of disbelief by the Judiciary,

I further aver Kathy has been part to neglectful and improper care of minor child Owen (8) which demands corrective, swift actions on the part of this court for processing and granting my rightful and just request for a change of venue.

I aver the relationships of a well-known Judicial Assistant who has served multiple Judges for over (15) years trumps even the relationship a Law Clerk could have which would have required an impartial Judge to recuse themselves under Maryland Rule 18-102.11 (a) (1).

I aver Kathy's relationships to the Circuit Court were contributing factors for the extension of the traumatic alienation of my Son (8) experienced being physically held from my care, his mother seeking to place minor child (8) in counseling for "missing dad" enforced by through the prejudice of this court led to my complete emotional breakdown 2-26-21.

I aver a peace/Domestic Violence Order was taken out against me by Amy's mother while I was hundreds of miles out of the state of Maryland on vacation in 2021 attending Winter Carnival with my now fiance Ashley, we were traveling with her daughters that year sadly without my Son Owen.

I aver in 2021 Amy, holding my son in Kathys home, prevented Owen (age 5 at the time) from attending Winter Vacation subjecting Owen (age 5 at the time) to intentional emotional trauma Amy, Amy clearly determined her own actions caused **Owen to require counseling for the stated reason of "trauma resulting from parental alienation of not seeing his father,"**

For Reference, Exhibits Judicial Impropriety ex2 2-25-21 Owens-Mothers-Harm.pdf – as part of the vast information disclosed to Dr. Seibert, email shows Plaintiff Sought Counseling for Owen from the "Trauma of not seeing his Father" - this shows Plaintiff's **malfeasance** enshrined by the fact Owen lived in Kathy Schwender's home then, and reiterates my views this court is inherently bias.

I aver it is a known fact by all party's Owen sought, and still seeks along with my efforts to be fully reunited with me, Dad.

3. Circuit Court Judicial Assistant Materially & Financially Benefits from Ruling

I aver Kathy Schwender is the primary care-giver of my Son Owen Barry (8) in proxy while Amy (Plaintiff) maintains a "red-eye" lifestyle working middle-of-the-night part-time shifts at Amazon. Amy goes to the bar weekly as regular at 'High Tops' bar and restaurant, normally sleeping during daylight hours and neglecting her motherly duties for proper upkeep of our Son Owen (8).

This Courthouse exhibits motivated reasoning to prefer Plaintiff maintains custody in the face of evidence of physical and emotional neglect of Kathy & Amy as caregivers.

I aver Kathy Schwender financially benefits directly from both Spousal and Child Support awarded to her daughter Amy by the Baltimore County Circuit Court which as stated employs Kathy, noting I have paid over \$74,000.00 over 2 years through ordered wage-lien to my Ex-wife to support this life-style while Amy lives at home "with mom."

I aver Kathy Schwender materially benefits directly from custody awarded to her daughter Amy by her mothers employer in the form of enjoying daily benefits of a full physical custody of her grandson enforced as if Owen was her own child, and attends vacations with my Son, neither Kathy nor Amy is a completely fit or proper sole custodial parent to Owen Barry, my son (8).

I aver Owen Barry (8) has visited the Circuit Court offices on multiple occasions, visiting where his Grandmother works to be baby-sat while the Plaintiff has otherwise admitted to sleeping during day hours due to her "red-eye" lifestyle.

I aver on visits to the Circuit Court Owen has met court staff and judge(s) who have worked alongside his grandmother. These facts set the perception that any Judge with-in the Baltimore County Circuit Court **should not preside** over this case due to my stated perception **there is the substantial risk of the possibility bias or prejudiced exists against myself, the Defendant – favoring Kathy and her Daughter (plaintiff).**

I aver the disclosed relationship by Keith Truffer and the fact Kathy Schwender is still a current Circuit Court Paralegal/Judicial Assistant does not require 'reading tea leaves' for any reasonable minded person to understand the perception of bias of this situation and to question the impartiality of Baltimore County's Circuit Court.

I aver Keith Truffer failed to recuse himself to avoid the perception of impropriety, and instead agitates further the perception of judicial prejudice in this matter to an exhaustive level, going so far to 'crack jokes' in his opening statements during the court hearing on 1/26/24 that Mr. Barry could be identified by a "process of exclusion" in the matter of introductions, I aver the Judge used a poor choice of words and that mocking a *Pro Se* party in this manner violated Maryland Rule 18-101.2 (b).

In closing statements made 1/10/22 by Keith Truffer while presiding as Judge over this case, Keith states of the Defendants claims of prejudice verbatim:

"It is entirely reasonable for any healthy person to wonder, due to the fact that Ms. Schwender has worked here, whether he or she is getting a 'fair shake' in litigation."

AB
3/4/24
5 of 7

RESPONDENT'S APPENDIX J

I aver Ms. Schwender 'still works there,' and that I am perfectly fit and healthy of mind in the capacity to determine that my Son was stolen from me by this Courthouse through the actions of its staffed employees and that I am **not** getting a 'fair shake' in litigation.

I aver that severe emotional trauma from the violation of my 14th amendment rights and the emotional trauma seeing my Son suffer from being held from me (age 5) caused the duress that led to complete, isolated emotional breakdown of 2/26/21. I maintain my perception this 'court is rigged' from bias caused by a more than a 'de minimus' relationship by way of Plaintiffs mother.

4. Recapitulating

This is not a situation that can be assuaged by easy remedy, or that could be "gotten over." I ask an expedient change of venue that assures fairness of litigation for myself as a *Pro Se* party.

To: Judge Dennis M. Robinson, Jr., with Ruth/Kathleen both retired, please make the decision on this matter before the court, you presumably under this circumstance may also know by acquaintance in a working or personal capacity Kathy Schwender (Plaintiff's Mother) yourself. With my reasonable doubt in this venue being well justified, grant me here basic relief for change of venue in this matter to instead be heard by Baltimore City Circuit Court.

In this high-conflict situation, judicial impartiality is urged where-as continuance of litigation in matters of Schwender vs. Barry in its current venue of Baltimore County would put public confidence in the independence, integrity, and impartiality of the Baltimore County Circuit Court's judiciary at risk per Maryland Rule 18-101.2 (a), and would further violate my rights. I have no confidence there is even a slight possibility for impartiality in this very defined situation of a tenured employee's daughter leveraging the Circuit Courts prestige where her mother works to commit fraud for custody/financial gain against me that benefits herself, and as here-stated, her mother as well.

WHEREFORE, the Defendant Jeffrey F. Barry conveys hope this Courts Administration GRANT EXPEDIENTLY the Defendant's Motion for a change of venue to Baltimore City Circuit Court, or a more appropriately further distanced eligible venue with no elongated ties to Kathy Schwender, to Virginia if Baltimore City presents a same relationship, and to otherwise retry as a decision by Jury whereas many states would allow this process under Family Law,

FIND itself, Baltimore County Circuit Court, in violation my 14th amendment right, also to

FIND the actions by its staff and judges acting within the scope of their official duties have further the perception of impropriety / bias' and

FIND where those actions as carried out by the Judiciary, have been the cause of emotional trauma to the defendant that have resulted in damages, finally to

GRANT temporary relief of a week-on / week-off exchange schedule for the rest of this calendar school year till the Summer exchange schedule of Owen, this being the most pressing interest of myself and my son (8) Owen Barry, who best succeeds through increased time with Dad (defendant), and any other relief to Defendant it sees fit.

JB 3/4/24
6 of 7

RESPONDENT'S APPENDIX J

I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.

Respectfully submitted,


3/04/2024
3502 E. PRATT ST.
Baltimore MD.

Jeffrey F. Barry
email: jfbarry87@gmail.com
PHONE: 667 212 8422

Certificate of Service,

I HEREBY CERTIFY that on this 4th day of MARCH, 2024, a copy of the foregoing document was served via being mailed first class, postage pre-paid upon:

Amy Schwender
29 Spring Glen Court
Cockeysville, MD 21030

Hunter Gallagher
999 Corporate Blvd., Suite 100
Linthicum Heights, MD 21090


Pro Se
3/04/2024
Jeffrey F. Barry

JB 3/14/24
2087

AMY BARRY

Plaintiff

v.

JEFFREY BARRY

Defendant

*

IN THE

*

CIRCUIT COURT

*

FOR

*

BALTIMORE COUNTY

*

Case No.: C-03-FM-20-003949

* * * * *

ORDER – MOTION TO CHANGE VENUE

The court has reviewed and considered the Defendant's Motion to Change Venue in this case. The Defendant's Request was termed a Motion to Change Venue. The gravamen of the Defendant's Motion is that the trial court, specifically the undersigned judge to whom the case has been specially assigned, cannot act fairly and impartially in this matter. Among other support for his Motion, the Defendant cites to MD. RULE 18-102.11 *Disqualification*. The court will treat the Motion as one requesting the court's recusal under that Rule. The decision on a requested recusal rests with the trial judge, *In re K.H.* 253 Md App. 134, 154 (2021), and the court will rule on the Motion without a hearing.

Such a request is a serious matter. It may reasonably call into question a judge's ability to be fair and impartial or, on the other hand, that request can be seen as a tactic to remove a judge from litigation where the court's rulings have not always favored the party seeking the recusal. Irrespective of the reasoning, the recusal of a judge who has spent considerable judicial resources on a particular case is disruptive and results in a waste of those judicial resources.

This case was filed in 2020 and there is a very long and detailed history of which this court has necessarily become knowledgeable. The court has been overseeing all matters in this case since March 2021 and, solely as a result of these proceedings, has become highly familiar with the parties, the minor child and the difficulties presented by the parties' ongoing conflict with one another.

The court finds that none of the reasons for disqualification stated in MD. RULE 18-102.11 are present in the current matter. The court has no knowledge of the Defendant from any extrajudicial source and has no personal bias or prejudice towards the Defendant. The court is aware that the Plaintiff's mother is an employee in the courthouse and understands Mr. Barry's concerns on this issue. However, the court has had no communications concerning this case with that employee nor anyone associated with the employee. Matters have been decided solely on the evidence presented in open court in the Defendant's presence. The court finds that no "reasonable person with knowledge and understanding of all the relevant facts would question the judge's impartiality" in this instance. [See *In re K.H.* 253 Md App. 134, 154 (2021).]

Finding no good cause for disqualification, it is this **27th day of March 2024**, ORDERED that the Defendant's Motion to Change Venue is DENIED.


Judge Keith R. Truffer

Entered: Clerk, Circuit Court for
Baltimore County, MD
March 27, 2024

RESPONDENT'S APPENDIX K

AMY BARRY * IN THE
Plaintiff * CIRCUIT COURT
v. * FOR
JEFFREY F. BARRY * BALTIMORE COUNTY
Defendant * Case No.: C-03-FM-20-003949

* * * * *

JUDGMENT OF ABSOLUTE DIVORCE

On January 5, 6, and 10, 2022, the court conducted a remote evidentiary hearing in this matter on all issues arising out of the parties' divorce and separation as alleged in Plaintiff's Complaint for Absolute Divorce filed on September 29, 2020, and Defendant's Petition for Contempt filed on July 9, 2021. Plaintiff appeared with counsel; Defendant appeared *pro se*. The Court having heard testimony and accepted evidence and for the reasons stated on the record on January 10, 2022, it is on the 12th day of January 2022, by the Circuit Court for Baltimore County hereby,

ORDERED, that AMY BARRY, Plaintiff, is awarded a Judgment of Absolute Divorce from JEFFREY F. BARRY, Defendant; and it is further

ORDERED, that Plaintiff (hereinafter "Ms. Barry") shall have sole legal custody of the parties' minor child, namely Owen Barry, born July 13, 2015 (hereinafter the "minor child"); and it is further

ORDERED, that Defendant (hereinafter "Mr. Barry") shall be listed on all relevant records for the minor child, including educational and medical records, and shall have access to all such records for the minor child; and it is further

ORDERED, that the minor child shall primarily reside with Ms. Barry; and it is further

ORDERED, that during the minor child's school year, Mr. Barry shall have access with the minor child at the following times: every Wednesday from after school until 7:00 p.m.; every other

RESPONDENT'S APPENDIX K

weekend from Friday at 5:00 p.m. through Sunday at 5:00 p.m. and every third weekend of the month on Saturday from 10:00 a.m. until 5:00 p.m.; and it is further

ORDERED, that during the minor child's summer break from school, Mr. Barry shall have the minor child for three (3) nonconsecutive two-week periods; and it is further

ORDERED, that Mr. Barry shall identify and notify Ms. Barry of his intended summer access periods by May 15th of each year; and it is further

ORDERED, that Mr. Barry's access with the minor child shall be unsupervised; and it is further

ORDERED, that Mr. Barry shall be responsible for all transportation to and from his access with the minor child; and it is further

ORDERED, that the parties shall share time with minor child pursuant to the following holiday visitation schedule, which shall supersede the normal visitation schedule:

- **Easter** – The child shall spend Easter with Mr. Barry in even numbered years and with Ms. Barry in odd numbered years from 9:00 a.m. until 7:00 p.m.
- **Mother's Day** – The minor child shall be with Ms. Barry on Mother's Day from 9:00 a.m. until 7:00 p.m.
- **Father's Day** – The minor child shall be with Mr. Barry on Father's Day from 9:00 a.m. until 7:00 p.m.
- **Halloween** – The minor child shall have the right to trick or treat on Halloween with Ms. Barry in even numbered years and with Mr. Barry in odd numbered years.
- **Thanksgiving** – The minor child shall be with Mr. Barry in even numbered years and with Ms. Barry in odd numbered years on Thanksgiving from 9:00 a.m. on Thanksgiving Day until 9:00 a.m. on the day after Thanksgiving. Ms. Barry shall have the minor child the Saturday after Thanksgiving every year from 9:00 a.m. until 9:00 a.m. on the Sunday after Thanksgiving.
- **Christmas** – In even numbered years, the child shall spend Christmas Eve with Mr. Barry from 10:00 a.m. on Christmas Eve until 10:00 a.m. on Christmas Day and then shall spend from 10:00 a.m. on Christmas Day until 10:00 a.m. the day after Christmas with Ms. Barry, with the schedule to alternate in odd numbered years.

RESPONDENT'S APPENDIX K

- **The Minor Child's Birthday** – Each party shall be entitled to see the minor child on his birthday.
- **Fourth of July** – The minor child shall be with Ms. Barry in even numbered years and with Mr. Barry in odd numbered years from 9:00 a.m. on July 4th until 9:00 a.m. on July 5th; and it is further

ORDERED, that neither party shall consume alcohol while the minor child is with them or prior to their access with the minor child; and it is further

ORDERED, that neither party shall introduce any significant others to the minor child until they have been dating for at least six (6) months and neither party shall have a significant other stay overnight while the minor child is with them until they have been dating for at least twelve (12) months; and it is further

ORDERED, that either party shall be allowed to travel out of state with the minor child during their access time with the minor child provided they have provided the other party with the specific dates and times of such travel and the specific location where the minor child will be staying; and it is further

ORDERED, that the daily telephone or video calls between the minor child and the party who does not have the minor child shall continue; and it is further

ORDERED, that Mr. Barry shall pay to Ms. Barry, by wage lien through the Office of Child Support Enforcement, the sum of Seven Hundred Fifty Dollars (\$750.00) per month for a period of two (2) years as alimony, accounting from and with the first month payment being due in January 2022; and it is further

ORDERED, that Mr. Barry is denied alimony; and it is further

ORDERED, that commencing January 2022, Mr. Barry shall pay to Ms. Barry, by wage lien through the Office of Child Support Enforcement, the sum of One Thousand Seven Hundred Ninety-

RESPONDENT'S APPENDIX K

Five Dollars (\$1,795.00) per month for the support and maintenance of the minor child; and it is further

ORDERED, that as of January 10, 2022, Mr. Barry has accrued child support arrears in the amount of Five Thousand Four Hundred Seventy-Five Dollars (\$5,475.00); and it is further

ORDERED, that Mr. Barry shall pay an additional Two Hundred Dollars (\$200.00) per month by wage lien through the Office of Child Support Enforcement towards his arrearage amount until the arrears are paid in full; and it is further

ORDERED, that Mr. Barry shall make a contribution towards Ms. Barry's attorney's fees in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) within six months of the date of this Judgment; and it is further

ORDERED, that should Mr. Barry fail to pay Ms. Barry the sum ordered within six (6) months of the date of this Judgment, Ms. Barry shall be able to obtain a judgment against Defendant by filing a Motion with this Court; and it is further

ORDERED, that Ms. Barry shall have access with the parties' two (2) dogs during Mr. Barry's Saturday access on the third weekend of the month with the minor child from 10:00 a.m. until 5:00 p.m.; and it is further

ORDERED, that each party shall retain their own bank accounts; and it is further

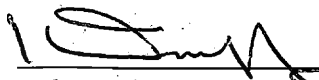
ORDERED, that each party shall retain their own retirement accounts; and it is further

ORDERED, that Ms. Barry shall be granted the resumption of the use of her maiden name, AMY KATHLEEN SCHWENDER; and it is further

ORDERED, that Defendant's Petition for Contempt is hereby DENIED.

ALL SUBJECT TO the continuing jurisdiction of this Court.

Entered: Clerk, Circuit Court for
Baltimore County, MD
January 13, 2022


Judge Keith R. Truffer