

To the Citizens' Commission,

I am pleased to hear that you are working on posting the testimony you heard in Concord. I sent an e-mail to the commission, I wrote up hard copies, and I spoke in Concord. Each time, I think, the revisions got better, the language grew more moderate, and I came closer to following the committee's guidelines for testimony. The following is the latest

draft and, I believe, closest to what I actually said in Concord. When

you get to posting, I ask you to post the draft below.

I included my mailing address for the commission -- I ask that it not be published. Thank you.

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To the New Hampshire Citizens Commission on the State Courts, ~ ~ ~~~~~
First, thank you for serving on the commission.~ A just court system is a foundation of democracy and I appreciate your working to help New Hampshire achieve this ideal.

~~~ ~I wish to share with you my experience in Merrimack County Superior Court, and although it was mostly negative, I hope that my thoughts can contribute to constructive reform.

~~~~ First the positive.~ I attended a Thursday afternoon orientation session, geared to those who could not hire lawyers.~ Although I used a lawyer, I appreciated the session, the chance to ask questions, the opportunity to become familiar with the surroundings, and the hospitality of the administrator.

~~~~ In my divorce, I lost not just my life's savings, but more importantly, my faith in the courts, and my belief that the judge would treat me fairly, could distinguish between truth and perjury, and would abide by New Hampshire statutes.

~~~~~ I know that at this point you may be tempted to take my concerns less seriously, to write me off because I lost in divorce court.~ In fact, in our culture, we sometimes label men "bitter" in order to give ourselves permission to ignore injustice. I hope that you won't.

~~~~~ In my case, the first issue for the judge to decide was whether he would enforce the agreement my ex-wife and I made before we married, and lived by throughout our marriage, i.e. to keep our finances separate.~ Over our marriage, my ex-wife spent her money while I saved mine.~ Then she asked the court to ignore our agreement and split our assets (my assets) in half.~ I asked the court to enforce RSA ~458 which says that the court may decide that "an equal division would not be appropriate or equitable after considering ...the value of property that is allocated by a valid prenuptial contract made in good faith by the parties."~~~~~ .

~~ ~~~~~The judge decided that our contract was invalid because it was not written down. ~While I accept that it is wise to write down agreements, I don't accept (and I don't believe that legal precedent accepts) that oral contracts are invalid per se.~ I recognize that the judge made a legal interpretation, but in order to support his interpretation, he had to ignore nine years of documented evidence, the testimony of witnesses, and my ex-wife's own admission.

~~~~~ The second issue in my case is of even greater concern.~ I lost here not because the judge made an interpretation; I lost because he ignored the law. I was counting on RSA~ 458 which says that the court may decide "that an equal division would not be appropriate or equitable after considering the... health...of each party."

~~~~~ I presented documents from a dentist and an oral surgeon to prove that I required surgery that would cost more than ten thousand dollars.~~ Surely, RSA~ 458 applied to me, didn't it?~~ Apparently not. ~~~~~ Finally, perjury occurred in the courtroom. ~ My lawyer, as gently as he could under the circumstances, used documents and cross-examination to expose the perjury.~ The judge's response?~ It didn't matter.

~~~~~ I had another lawyer examine the ruling and I asked about appeals regarding the above issues.~ The second lawyer gave it to me straight.~ He said that perjury was in the jurisdiction of the county prosecutor and that his office routinely ignores its responsibility in this matter.~ Asking the county attorney to enforce the laws against perjury would waste my time.

~~~~~ The second lawyer also confirmed for me that the judge had ignored RSA~~~ 458, but, he said, this kind of thing happens all the time, especially to men. He told me that if an appeals court rules that a judge in a divorce case had to apply the law, thousands of litigants would come out of the woodwork and expect justice as well.~ He advised me not to count on the appeals court to uphold the law if it meant this kind of inconvenience for the lower courts.~ Finally, I learned that the cost simply to file an appeal was \$3,000, a price unaffordable to most working people and certainly beyond the means of someone recently impoverished by the divorce court. ~I acknowledge that there should be a screening process and that not everyone who loses is entitled to an appeal.~ But that screening process should be based on the law, and not on personal wealth.

~~~~~ My second lawyer's opinion raises questions that I could not afford to explore alone, but they are essential questions, I believe, for the Citizens Commission.~ Is there evidence of gender bias in divorce rulings? Is there any mechanism to ensure that judges actually apply the law?~ Is it true that the county attorney has neither the resources nor the inclination to take perjury seriously?

~~~~~ It is too late for me.~ But I hope that future litigants are treated justly by New Hampshire divorce courts.~ To that end, I offer a few suggestions for the Citizens Commission to consider.~ ~

~~~~~ First, appoint an independent body-- perhaps the Committee on Judicial Conduct -- to ensure against gender bias in family court cases.

~~~~~ Second, give the county attorney the financial resources and the moral imperative to respond to perjury.

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~~~~~ Thirdly, open the appellate court to those who have statutory grounds for appeal and not just loads of money.~ ~

Thank you,

Jon Kelly