

BURGOWER & RAINWATER, LLP

Wendy S. Burgower

BOARD CERTIFIED FAMILY LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
FELLOW - AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
FELLOW - INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS
Email: wendy@brfamilylaw.com

3355 W. Alabama, Suite 825
Houston, Texas 77098
713-529-3982
Fax: 713-522-5045

Charlotte D. Rainwater

BOARD CERTIFIED FAMILY LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
Email: charlotte@brfamilylaw.com

Sara C. Springer

ASSOCIATE
Email: sara@brfamilylaw.com

December 21, 2009

Mr. M.J. Molleston
Office of the Chief Disciplinary Counsel
State Bar of Texas
600 Jefferson, Suite 1000
Houston, Texas 77002

RE: H0110929883 Daniel Gawlikowski—Wendy Burgower

Dear Mr. Molleston,

The following is my response to the complaint filed by Mr. Gawlikowski.

I am currently serving as the Amicus Attorney for the daughter of Mr. Gawlikowski in his custody case. It is currently pending in the 247th District Court of Harris County, Texas, under Cause No. 2003-67714. Brisa Gawlikowski, a six year old child who has been the subject of litigation since she was about two years of age is my client. Mr. Gawlikowski is seeking to modify the Decree of Divorce that was entered in April 2005. I am the third attorney to serve in this capacity. Ms. Linda Thompson served as the Amicus Attorney in the original action in 2005. Ms. Teresa Taylor served in the modification action until 2009, when she requested to be replaced.

Mr. Gawlikowski has requested the termination of each amicus attorney in his case. He has also sought to set aside prior orders that he has agreed to in the past. In an effort to start the case without bias, I did not consult with either of the previous amicus attorneys.

Mr. Gawlikowski has had five different attorneys in this matter, and is currently represented by Mr. Walter Mahoney. Ms. Sikes (the mother and former wife of the complainant) has been represented by one former attorney prior to her engagement of Mr. Robert Kuehm and Ms. Mary-Olga Lovett, who have represented her in the divorce and the ongoing modifications.

Mr. M.J. Molleston
December 21, 2009
Page Two

The modification suit filed by Mr. Gawlikowski has been filed and non-suited three times. The present case is set for trial in June, 2010. However, Mr. Gawlikowski has filed a mandamus which is pending in the Court of Appeals. Mr. Gawlikowski is seeking to set aside the Court's "**Findings and Order on Motion to Strike Pleadings and For Sanctions**", in which he seeks to set aside the order in which he and his attorney were sanctioned by Judge Hellums. A copy of the order subject of the mandamus is attached as Response Exhibit 1. This order reflects the Court's intent that BOTH parents be enjoined from coming to the school during lunch and at other times not specifically set out for parental visitation (see page 7, section 4). The order restates and specifically references the order that Mr. Gawlikowski claims had expired.

The Order of Continuance (Response Exhibit 2) was granted, based upon several misrepresentations made by Mr. Gawlikowski at the time the case was called for trial. I was supportive of the request (by Mr. Gawlikowski) to continue the case as all involved were led to believe that there was a family member of Mr. Gawlikowski in the hospital fighting for her life (see Mr. Gawlikowski's Exhibit B). I, as Amicus Attorney, serve by appointment by the court and am considered as an extension of the Court. I am charged with the responsibility to act in the child's best interest.

At the time of the request for the continuance, Brisa was about to start first grade at Hunter's Creek Elementary School. I was opposed to the continuance only if it meant that for the duration of the case, Mr. Gawlikowski would continue to come to the child's school each day and eat lunch with her. After consulting personnel at Brisa's school and the child's therapist, I was of the opinion that the child's best interest would be served if Brisa could eat lunch with her classmates, without the involvement of either parent. I believed that the granting of the continuance would not be injurious to the child if the order prohibiting the parents from coming to school was in place until the final trial on the merits. The Court agreed and the language was added to the Order on Motion for Continuance. The case was reset to September 29, 2009.

The language in that order does not state that 'all orders expire on September 29, 2009', nor was that the court's intent. It simply *reset* the trial and, *in the interim*, neither parent was to be present at Brisa's school, or after care, except for pick ups, drop offs, a scheduled open house, and parent teacher meetings. When the case was again reset from September 29, 2009 to the current June setting, the "ban" on being present at school did not expire. Although the trial date was changed, the *interim* order was still in effect.

The transcript of the September 29, 2009 hearing supports my position. (See Gawlikowski Complaint Exhibit F). The Judge states on page 19 of the transcript: "I'll

Mr. M.J. Molleston
December 21, 2009
Page Three

put you to trial today” and further states “We’ll be frozen exactly where we are”. “Where we are” included the injunction that prohibited the parties from coming up to the school.

The Court affirms this position in its entry of the current order (Mr. Gawlikowski Response Exhibit 1, page 7, number 4). At no time did the Court intend for the “interim” and “band aid” order to expire until further orders were entered.

School personnel did call me and ask my opinion as to whether the order was in effect after September 29, 2009. I did tell the school representative that in my opinion (which was later confirmed by Judge Hellums) the order was in place and would stay in effect until a final order was entered by the Judge. I did not “lie” to anyone and would not lie to any one as I am an officer of the Court. In lieu of filing a mandamus, Mr. Gawlikowski could have asked the court for clarification. He chose not to do so. It is apparent that Mr. Gawlikowski and perhaps, his counsel, are the only ones who believe that the order in question had expired.

It should be noted that Mr. Gawlikowski has requested my removal from this case on multiple occasions. He filed a grievance against me in June, 2009 and was informed that there was no basis for a complaint. This present complaint was filed within two weeks of the Court’s granting of sanctions against Mr. Gawlikowski for “lying” and making material misrepresentations to the Court. It appears that this action is retaliatory and should be summarily dismissed. As a court appointed Amicus Attorney, I am charged with making suggestions, recommendations and decisions that are in the best interest of my client, Brisa Gawlikowski, not assuring the happiness of the parties. Parents enmeshed in this emotional type of litigation may not always agree with those suggestions, recommendations and decisions but that is just the nature of custody litigation. I have, and will continue to do my best to fulfill my role within the bounds of the law.

For your further consideration, I have attached affidavits from the mother’s attorneys who confirm that the order prohibiting the parties coming to the school was in effect when I talked to the school.

Please feel free to contact me should additional information or response be needed.

Sincerely,



Wendy S. Burgower