

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.03-RB-0743 (MJW)

SUZANNE SHELL
APRIL FIELDS
Plaintiffs

v.

ROCCO F. MECONI, Individually and Officially
FREMONT COUNTY DEPARTMENT OF HUMAN SERVICES, Officially
STEVE CLIFTON, Individually and Officially
DAWN RIVAS , Individually and Officially
TODD HANENBERG, Individually and Officially
DAN C. KENDER, Individually
ANNA HALL OWEN, Individually and Officially
Defendants

SUPPLEMENTAL PLEADING

COMES NOW, Plaintiff Suzanne Shell, *pro se*, by the leave of the court, to submit this supplemental pleading to the original complaint in the above captioned case.

1. Plaintiff Shell appears *pro se*. The court shall construe the pleadings and papers of a pro se litigant liberally. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (per curiam).
Joseph v. United States Federal Bureau of Prisons, 232 F.3d 901, 232 F.3d 901 (10th Cir. 10/16/2000)
2. Rule 15(d) states: Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting for transaction or occurrences or events which have happened since the date of the pleading

sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense.

3. The original pleading was filed along with a request for a request for a Temporary Restraining Order to prevent a hearing designed to deprive the plaintiffs of constitutionally protected rights. The TRO was denied; the action the plaintiffs wanted restrained occurred, and further irreparable deprivations were accomplished by the actions of the defendants.
4. Since the filing of the original pleading, the defendants have continued committing actions which constitute ongoing and irreparable deprivations of the plaintiffs' rights which are proximate to the original complaint. The events, actions, events and occurrences of deprivations which occurred after the filing date are continuing actions which directly related to and are the direct outcome of the claims in the original pleading which consist of the following acts:
 5. On or about April 16th. 2003, Defendant Meconi filed a complaint with the Attorney Regulation Counsel alleging that Shell was engaged in the unauthorized practice of law based solely on his bias against Shell. The purpose of this complaint was to retaliate against and intimidate and harass Shell for her association with Fields; and for her exercise of her first amendment protected freedom of the press news gathering activities; and for Shell's exercise of her right to contract with Fields. Shell has subsequently been subjected to an Unauthorized Practice of Law investigation and threats strictly for her news gathering activities. It is clearly established in law that while invoking this official process may be appropriate under certain circumstances, it is not appropriate or justified

when the intended effect is to retaliate against, intimidate and harass the plaintiffs.

6. A hearing to add Shell as a Special Respondent to Fields' Dependency and Neglect case was subsequently held in Fremont County District Court. During this hearing, Shell was denied the right to present evidence, compel the attendance of witnesses or production of evidence, to cross examine adverse witnesses and evidence, or in any other way participate in the hearing which she was the subject of, in violation of the Colorado Children's Code and due process. The defendants instituted and participated in a sham legal proceeding based on a false allegations against Shell to deprive her of protected rights and liberties. Defendants Meconi and DHS, by and through its employees, have done this before to Shell, and prevailed in convincing the court to abuse its discretion by making a ruling which did not conform to statutory restrictions and which was not supported by the evidence. Kender has facilitated the defendants' constitutional and civil rights violations by failing and refusing to protect Fields' legal interests and rights from these retaliatory, abusive and coercive acts by the other defendants in direct violation of his client's wishes and instructions. He has collaborated with the defendants to forcibly induce Fields to waive her rights to all due process protections available to her. Because Fields resists, the threats, intimidation, retribution, and recrimination have escalated, increasing Fields' distress. Kender has acted in cooperation with the other defendants' efforts to ensure that Shell not be permitted to have contact with Fields. Upon information and belief, orders issued joining Shell to the case; and preventing Shell and Fields' from associating together; and invalidating the properly executed power of attorney appointing Shell as Field's agent. Shell has never received any orders to this

effect preventing her the ability to file an appeal. The defendants all participated in this denial of due process. There are no available remedies for this deprivation.

7. Shell has already expended significant effort and expense following and documenting this case since shortly after its inception. The effect of the defendants' actions has been to deny Shell the right to continue her news gathering activities, thereby irreparably jeopardizing her project, as well as infringing on the right of Fields to speak to the only media who is interested about the issues surrounding her own case. This case represented a rare opportunity to engage in contemporaneous news gathering, and this project has been seriously and irreparably compromised as a direct result of the defendants' actions. April Fields case is the first case in Shell's seven years of news gathering which has fulfilled the requisite criterium for contemporaneous news gathering from the inception of the case to the conclusion. This singular opportunity has been destroyed by the actions of the defendants and cannot be retrieved or repaired.
8. The aforementioned motion and order have the effect of instituting a prior restraint on Shell's ability to engage in news gathering on the issues surrounding Fields's dependency and neglect case, and will establish the precedent to prevent her from engaging in news gathering in Fremont County altogether. The defendants' actions implicate any news gathering activities by any news gathering organization. It also has the effect of gagging Fields' participation in the media under freedom of the press, and has a chilling effect on any future news gathering in Fremont County on this subject. Fremont County cannot dictate which media Fields may or may not speak with.
9. Shell has been singled out by the defendants for this treatment. No other news media

organization or journalist has been subjected to the same harassment, intimidation, retaliation restraints, conditions, obstacles or obstructions to news gathering that Shell has had to endure at the hands of Fremont County since 1997.

10. Shell's news gathering performs the important function of injecting public scrutiny into the activities surrounding child protection proceedings. This is exactly the scrutiny that the defendants are hoping to avoid by having the court grant their motion to issue orders preventing Shell from engaging in legitimate news gathering on this case and in Fremont County . Shell maintains a particular interest in Fremont County because the reports emanating from Fremont County indicate that this County is one of the worst counties in Colorado regarding wholesale corruption, routine violations of rights and rampant abuses permeating every aspect of Fremont County child protection. Media and public scrutiny of this County's child protection activities is warranted.
11. The efforts, by defendants Meconi and DHS, by and through its employees, to prevent any client parent from having access to Shell have been consistent since 1997. Through the defendants' use of threats, intimidation and coercion, retaliation, retribution and recrimination, and with the complicity of respondent parent's attorneys, Meconi and DHS have almost completely blocked Shell's legitimate news gathering activities in Fremont County without meeting the strict constitutional scrutiny required under clearly established law. Having failed to effectively threaten, intimidate or coerce Fields into severing all contact with Shell, Meconi and DHS, with the knowledge, consent and participation of Kender and Owen, have resorted to the filing of frivolous motions seeking orders which are intended to violate, and which have violated, the

constitutionally protected rights of the plaintiffs under the color of law.

12. The very act of filing the motion, and requiring Shell to respond to frivolous pleadings and to seek the protection of a higher Court, constitutes deprivation of rights under the color of law. All such rights are guaranteed and promulgated through the 14th amendment to the U.S. Constitution.
13. The defendants have engaged in a systematic, willful, reckless, malicious and comprehensive campaign to defame and discredit Shell in retaliation for her exercise of her constitutionally protected activities. Defendants and Meconi and DHS and their employees have engaged in this campaign since 1997. This campaign is characterized by the malicious filings of frivolous pleadings and accusations and public statements about Shell including but not limited to “acting as counsel for respondent mother,” accusing Shell of engaging “in any unauthorized practice of law,” and involving “herself in this case in such inappropriate and unauthorized ways,” accusing her of advising parents not to comply with court ordered treatment plans and other harmful, false and unsupported statements regarding the nature of Shell’s interaction with families involved in dependency neglect proceedings in Fremont County. The purpose of this campaign is to ensure that respondent parents living in Fremont County do not avail themselves of the services provided by Shell, or speak to Shell in her capacity as a news gatherer. This defamation consists of actions as well as words, in that they will retaliate against any person who associates with Shell and then blame Shell for causing the bad results in the parents’ case. Parents are told that merely associating with Shell will “hurt their case.” As a result of this campaign of defamation, Shell’s professional reputation and the ability

to conduct her legal and peaceful business has been seriously and irreparably compromised in Fremont County.

14. It is clearly established in law that the Fremont County Department of Human Services, Fremont County Juvenile Court or guardian ad litem have no jurisdiction to regulate or restrict freedom of association with regard to respondent parents and outside persons regarding any circumstances that are irrelevant to the merits of the case, particularly prior to an adjudication. Instituting legal action to restrict the freedom of association between the plaintiffs is a malicious use of process in retaliation for their association and a malicious attempt to prevent the plaintiffs from exercising that right.
15. Is clearly established law that Fremont County Juvenile Court nor Fremont County Department of Human Services, nor any Guardian ad litem have any legitimate authority or jurisdiction to limit or restrict Shell's legitimate news gathering activities. Instituting legal action to restrict Shell's news gathering activities regarding this case, without meeting the strict scrutiny which is constitutionally required, is a malicious use of process in retaliation for her First Amendment protected press activities and constitutes a prior restraint and an effort to prevent her from engaging and her legitimate news gathering business.
16. On June 16, 1999, Defendant Meconi served Plaintiff Shell a motion to add her as a special respondent on Fremont County case number 97JV000019. This motion contained the false report that Shell had attempted to contact the children in that case. The testimony revealed at that time that Shell was engaged in news gathering and had made no attempt to contact the children. The intent and effect of this motion was to make Shell

subject to court orders without justifiable cause or proper jurisdiction and to defame Shell's character and professional activities. On or about April 16th 2003, Meconi filed a similar motion on Fremont County case No. 03JV3. The filing of this motion constitutes a pattern of retaliation, intimidation and harassment through the malicious use of process against Shell based solely on her exercise of her constitutionally protected rights and on her viewpoint. The purpose of filing these motions is to prevent Shell from exercising her aforementioned constitutionally protected rights or privileges. All such rights are guaranteed and promulgated through the 14th amendment to the U.S. Constitution.

17. The defendants have disregarded the rule of law and have imposed the rule of man upon the plaintiffs in this case, relying on immunity to protect them from being held accountable for their actions to violate the rights of the plaintiffs. Colorado and United States law clearly provide for the right of a person to assign agency through a Power of Attorney without impairment by any state agency or court except for just cause; for the right to freely associate and engage in news gathering without fear of retaliation, retribution, harassment, threats, sanctions or deprivations of rights and privileges; for the right to a fair hearing before an impartial judge and full due process protections in any court action involving her; for the right to rely on the protection of the law regardless of who acts to violate her rights and regardless of the fact that her viewpoint is unpopular with the defendants, any state agency or any court.
18. Because this Court has advised the plaintiff that he does not understand what she is seeking, Shell submits the following for clarification:
 - a. Defendants have acted and/or conspired to act under the color of law to retaliate

against plaintiff Shell's exercise of her constitutionally protected rights of freedom of association, freedom of the press, due process and right to contract based on her critical viewpoint of their professional conduct and the potential publication and/or broadcast of her findings. Said retaliation consists of defamation, harassment, intimidation, malicious use of process, application of fundamentally unfair procedures, instituting prior restraints on her news gathering, interfering with and impairing legal access to information and files, the filing of false reports of Unauthorized Practice of Law for the purposes of subjecting plaintiff Shell to investigation and potential sanctions, threats and coercion, and acting to impair and prevent her constitutionally protected rights to associate, to contract and to fulfill contractual obligations, and to engage in news gathering with persons who are the subject of child abuse investigations and court cases in Fremont County, Colorado, including, but not limited to, plaintiff Fields. Plaintiff Shell has been singled out and targeted from among all news gathering organizations for this impairment of her rights, constituting viewpoint discrimination.

- b. **Actual damages sought** for irreparable loss of mutually desired association between Fields and Shell during pendency of D&N case for unprecedented contemporaneous news gathering on this story and subsequent loss of valuable story material, a property interest which is unrecoverable (Irreparable injury); Intentional infliction of emotional distress, pain and anguish, irreparable loss of privacy of association and freedom of association for the purposes of issue

advocacy, irreparable loss of freedom of press, irreparable loss of right to contract, irreparable loss of due process. \$150,000 per individual defendant, \$500,000 for Fremont County DHS. **Punitive and exemplary** damages for malice, bad faith and willful disregard of plaintiff's rights demonstrated by an ongoing pattern of conduct by Fremont County DHS and Defendants Clifton and Meconi.

Injunctive relief - defendants shall be restrained from interfering with or retaliating against Shell for her exercise of her constitutionally protected right to associate, to contract and to engage in news gathering, and defendants shall be restrained from retaliating against any person who chooses to associate with Shell, to contract with Shell, or who chooses to give their story to Shell.

19. This Court has demanded to know why Shell must engage in this news gathering or produce her documentary series, suggesting that other, more mainstream, news organizations already do this. In response, Shell asserts that her news gathering as an independent producer of documentary videos is in no way subject to State agency and/or court scrutiny, evaluation, jurisdiction, or permission; nor subject to censorship or prior restraint absent a compelling state interest subject to the strictest constitutional scrutiny. Neither is Shell to be regarded as a "different" or "lesser" class of media representative to be afforded fewer constitutional protections or subjected to increased restrictions by virtue of her independent status. Furthermore, Shell's motives for engaging in this news gathering are not relevant to this court nor to the merits of this complaint. If the defendants or this court can infringe on Shell's news gathering, then they can infringe on any news organization's news gathering. If the defendants can impair the plaintiffs'

freedom of association for the purposes of issue advocacy, then anyone can be prevented from associating for any reason simply to serve any government agency's agenda.

20. This court has also advised the plaintiff of the statutory confidentiality issues surrounding Dependency investigations and court proceedings. In response, plaintiff Shell asserts that it is clearly established in law that statutory confidentiality protections are subordinated to constitutional freedom of the press protections; and since Dependency and Neglect hearings are open to the public in Colorado, any issue of confidentiality is irrelevant to her news gathering or associations, and therefore irrelevant to the merits of this complaint.
21. This court has also presented his concerns about Shell 'continuing' to engage in the unauthorized practice of law, specifically stating that her agency under Fields' power of attorney was an attempt to circumvent UPL restrictions, and stating on the record, his belief that Shell is engaging in UPL by writing motions and pleadings which she has not written. Shell asserts that this court has assumed facts which are not in evidence in arriving at his conclusions, and that the court's unsubstantiated conclusions demonstrate a bias against Shell which will adversely prejudice her prosecution of this complaint.
22. This court has also advised the plaintiff that he trained Judge Julie Marshall, the judge against whom Shell is leveling allegations of bias, abuse of discretion, and other abuses and violations of rights associated with this complaint. This court's impartiality is now in question with regard to plaintiff Shell, due to this court's close professional association with Judge Marshall.
23. The defendants are not entitled to immunity because their actions were committed in bad

faith, and because their actions violated the constitutionally protected rights of the plaintiff - which rights were clearly established in law at the time the acts were committed, and because the defendants' acts were committed outside the scope of their legitimate authority.

24. This complaint addresses Constitutional issues which cannot be and have not been addressed in the state district court and, therefore, does not seek to relitigate issues addressed by the state district court. There are no other available remedies and/or any available remedies have been exhausted and/or any available remedies are ineffective. Plaintiff Shell has no available remedy by which she might mitigate her damages. Damages continue to accrue by virtue of the ongoing conduct of the defendants and losses sustained by the plaintiff are irreparable and irretrievable and ongoing. Plaintiff Shell's losses and injury will continue in perpetuity unless the defendants are restrained by this court.
25. There are material facts in dispute which must be addressed through discovery.

Respectfully submitted July 10, 2003

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the attached document **SUPPLEMENTAL PLEADING** were delivered via personal service on July 10, 2003 (or placed in the United States Mail, first class mail, postage prepaid where indicated).

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July 10, 2003

Suzanne Shell