

Case Synopsis for David Johnson:

First, you need to know that David is a **CUSTODIAL PARENT** ordered to pay child support to the NONCUSTODIAL mother. No reason that I can see except that the court doesn't like him. He reported one marital master to the [Judicial Conduct Committee](#), and he [recused](#). (Forget who it was, I wasn't his attorney at the time.) Federal Enabling Legislation regarding Child Custody Guidelines [mandate that the non-custodial parent pay the custodial parent in order to collect federal funds](#) for support of the OCSE.

I'm frankly sick and tired of the courts not making their decision based on LAW. In this case, at the contempt hearing, I submitted a [REQUEST FOR FINDINGS OF FACT](#), and rulings of law, which were not ruled upon in the Court's ORDER. I specifically asked for a ruling that a finding of civil contempt [requires a finding of present ability to comply](#) with the Court Order. Curiously, I went to the court today to look at more in the file, and it was not there. It was listed on the docket sheet, but it was not behind the contempt [ORDER](#). It was heard by Marital Master Phillip Cross, but Judge Sadler never ruled on it. This happens to be another complaint I have of the court system. Judges are supposed to RULE on Requests for Findings and Rulings.

In this case it's particularly egregious because a JUDGE told my client to take it to the Superior Court, stating that it sounded like corruption and the Superior Court denied him without setting it for hearing. Needless to say, I cannot reveal the name of the judge.

Please note that about a week before the Supreme Court's unpublished [opinion](#) on this case, where L. Jonathan Ross, Esq. represents the mom, the Bar gave Judge Broderick the "L. Jonathan Ross" award. <http://www.courts.state.nh.us/press/rossaward.htm> It smacks of "[Appearance of Impropriety](#)", prohibited by Canon 2, Rules of Judicial Conduct. I think perhaps the bar should consider naming its awards after dead people to avoid this in the future.

I wracked my brain for two days trying to figure out why the Court would set a bail hearing after the Superior Court had just affirmed the bail, and liter-

ally within a couple of hours of the arrest of Mr. Johnson. I doesn't seem to make sense that the Court has to make an explicit finding for contempt that the man has the money to pay his child support arrearage, fails to rule on our Proposed findings and ruling of law stating that my client doesn't have the money, and it's an element of the offense, sets the amount of bail in the Contempt ORDER, and then sets it for a bail hearing right after arrest. I thought the purpose of the bail hearing was to set reasonable bail, but bail has already been set in this case. Perhaps Judge Sadler can explain that to me on Monday.

It is true that David did not pay it last summer when he had cash from the sale of the home. He explained to the court under oath that he used it in part to pay personal (and therefore not recorded) loans he had previously gotten to keep the mortgage from going into foreclosure. So some of it was really not "proceeds" at all. It was debt on the property. He does not, and will not have the ability to pay his arrearage. He also had extraordinary moving expenses because the OCSE arranged to have his driver's license suspended right before September 1, the date he was to move out the family home. (Part of the consideration for the home was about 6 months of rent - and it ran out Sept. 1.) Instead of using some friends and his own truck, he had to rent a truck and hire more people to help. The license suspension happened without ANY due process on his ability to pay.

I originally guessed that since David was [pro se](#) at a child custody proceeding that Jon Ross or former attorney may have turned in a [proposed child support order](#) labeling him as the obligor in the [Child Support Guidelines Worksheet](#) without knowing who was going to get custody of the child, and frankly not caring. I assumed that the court probably simply signed it. It turns out I was wrong. There were NO [Child Support Guidelines Worksheets](#) for any of the child support orders in the file.

Actually, this is significant. The Child Support law states that

II. There shall be a [rebuttable presumption in any proceeding for the award of child support that the amount of the award which would result from the application of guidelines provided under this chapter is the correct amount of child support](#). A written finding or a specific finding by the presiding officer on the record that

the application of the guidelines would be unjust or inappropriate in a particular case, as determined by using the criteria set forth in [RSA 458-C:5](#), shall be sufficient to rebut the presumption in such case. Oddly, one of the criteria mentioned that can result in a deviation from the guidelines is “Parenting schedule.”

Now my client is the [custodial parent](#), although the mother has fairly significant custodial time as well. So under RSA 458-C:4, he is the presumptive obligee. No circumstances were cited as a reason for a downward adjustment of the mother’s child support obligation, as she never asked for one as required under RSA 458-C:5. I could find no pleadings filed by [L. Jonathan Ross, Esq.](#), the mother’s attorney even requesting a downward adjustment of the child support guidelines. Instead, there is a child support order for my client to pay the mother with no explanation in the file at all for a reason that the child support obligation was going in the wrong direction entirely. While the NH Supreme Court is correct that the [New Hampshire does not mandate that the “obligor” us the non-custodial parent](#), it does require a rebuttable presumption that this is so. The judge has to make findings of facts to justify an adjustment to the child support guidelines. Absent any evidence that the child support guidelines worksheets were even completed in the case, I estimate that the judge is on the line for about \$700 per month of “[abuse of judicial discretion](#).” Then there is that pesky little problem that the Court made my client’s child support obligation due through the [Office of Child Support Enforcement](#). The [federal law authorizing](#) the states to collect child support for the benefit of children and give them monetary incentives to collect more child support unfortunately only authorizes states to collect child support from **non-custodial** parents. So the judge, the marital master, the Office of Child Support, and the Division of Motor Vehicles, who suspended my client’s driver’s license for non-payment of child support are all potentially liable for federal funding fraud.

L. Jonathan Ross, Esq. has a reputation in the state as one of the smartest and shrewdest child custody attorneys. It is absolutely inconceivable that he doesn’t know that child support orders are to be based on the child support guidelines. He took advantage of my client’s status as [pro se](#) in temporary hearings on October 31, 2005, stating that the court "could" hear the issue of temporary child custody in a motion he filed less than 10 days before the

scheduled status hearing. Court rules require a 10 day response time to motions. Superior Court [Rule 58](#). He submitted a proposed order taking a day of custody away from David, and that was not changed a lot at the permanent custody modification hearing in March of 2006. Despite Jon Ross's attempts to wrest custody from David entirely, he failed. Parent and child are very closely bonded.

David [appealed](#) the March 2005 child custody order and it was [denied](#) by the NH Supreme court without oral argument, in an unpublished opinion in February. With respect to child support, it is consistent with their published opinions. The Court has stated before that the "Obligor" does not have to be the non-custodial parent. **HOWEVER**, it is federal funding fraud to enforce the ORDER through the Office of Child Support Enforcement. His license was suspended once, is in danger of being suspended again, and the OCSE replied to our Petition for Writ of Cert, AND informed the court that David did not make his payment as of Monday, so please issue the [capias](#). Those offices are set up under federal law to collect money on behalf of **custodial** parents. And so my client sits in jail. Is it any wonder that there is a strong movement afoot for a good look at the state's treatment of men in the court systems?

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Paula J. Werme, Esq.

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