

Bucks County Law Firm of Cooley & Handy Challenges Order Sanctioning Father \$2,000.00 for Cursing in Front of His Ex-Wife and Daughter on First Amendment Grounds.

Father Claims that Bucks County Judge's Order Prohibiting Him From Using "Inappropriate" Language Constitutes an Illegal and Unenforceable Prior Restraint on Free Speech.

Doylestown, Pa (April 24, 2009) – A father in a custody dispute is challenging a contempt order entered by a Bucks County judge that sanctioned him \$2,000.00 for violating a custody order requiring him not to use profanity or inappropriate language around his daughter and the child's mother. The specific language of the custody order, entered by the Hon. Wallace H. Bateman, Jr., requires the father to "refrain from using any profanity when dealing with mother and mother's husband, and using any type of language around the children that's inappropriate." Judge Bateman held father in contempt and sanctioned him \$2,000.00 in attorney fees for violating the order after he admittedly used profanities during a custody exchange. Father has appealed the finding of contempt and the sanctions to the Superior Court of Pennsylvania based on the First and Fourteenth Amendments to the United States Constitution.

"This is a classic example of an illegal and unenforceable prior restraint on free speech" according to the father's attorney, Kevin J. Handy, a partner at the Doylestown law firm of Cooley & Handy.

The Supreme Court of the United States defines prior restraints on free speech as "administrative and judicial orders forbidding certain communications when issued in advance of the time that such communication are to occur." Prior restraints carry a heavy presumption of unconstitutionality and are permissible in only exceptional cases such as war, obscenity and incitements to acts of violence and the overthrow of force by the government. Orders issued in the area of First Amendment rights must be framed in the narrowest of terms so as not to prohibit or infringe on any constitutionally protected speech.

That is part of the problem with the order according to Mr. Handy. "Not only does the order prohibit clearly constitutionally protected speech, it is unconstitutionally vague and subject to arbitrary and discriminatory enforcement. Who gets to determine what speech is 'inappropriate' and under what standards? The Supreme Court noted in *Cohen v. California* that courts and legislatures cannot limit speech to appease the most squeamish among us."

Judges in custody cases often enter orders that purport to restrict what one or both parents may say to each other or around their children. These provisions, however, are rarely enforced through contempt or sanctions or challenged on appeal. The Court of Appeals of Washington, however, in a similar case, recently held that an order in a custody dispute prohibiting a father from contacting immigration or other governmental official concerning his ex-wife's immigration status constituted an illegal prior restraint. The case is *In re the Marriage of Meredith*.

"Parents to custody disputes have no less constitutional rights than parents in intact families or other individuals" claims Mr. Handy. "A judge may no more restrict a parent's use of language that he subjectively finds objectionable than the government can for any other group or individual."

Mr. Handy notes that Father is not arguing in his appeal that judges cannot take into consideration profanity use or other constitutionally protected speech in formulating their custody decisions. "That issue is for another day," states Mr. Handy. "Father is only claiming that judges in custody cases cannot prohibit or sanction constitutionally protected speech."

Cooley & Handy represents individuals in personal injury, class action, divorce, custody, and other litigation in Bucks, Montgomery and Philadelphia Counties and throughout Pennsylvania.