

Derek C. Syphrett
Pro se litigant (Defendant)
252 Fountayne Ln,
Lawrence Township, NJ 08648

June 7, 2013

VIA HAND DELIVERY:

Family Division Clerk
Mercer County Courthouse
209 South Broad Street
Trenton, NJ 08650-0068

RE: Bischoff v. Syphrett
Docket No.: FV-11-887-13

Dear Clerk:

Enclosed herewith please find an original and two copies of the following:

1. **Notice of Service**
2. **Proposed Order Form**
3. **Proof of Service**
4. **Certification of Motion**

Kindly file same return a filed copy and stamp a copy for immediate return to the Defendant at the Clerk's window.. Thank you.

Kind regards,



Derek Syphrett
Pro se litigant, allegedly abused spouse of the Plaintiff, and Defendant

MERCER COUNTY
FAMILY CASE MANAGEMENT

2013 JUN -7 PM 1:41

RECEIVED

KATHRYN BISCHOFF
(aka Katy Elizabeth),

Plaintiff

vs.

DEREK SYPHRETT,

Defendant

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: FAMILY PART
MERCER COUNTY

Docket No.
FV-11-887-13

PROOF OF SERVICE:

**MOTION TO ENFORCE LITIGANTS
RIGHTS, MODIFICATION OF RESTRAINTS
& EQUITABLE RELIEF**

Derek C. Syphrett

Pro se Litigant

Defendant: Superior Court of New Jersey Chancery Division

252 Fountayne Lane

Lawrence, NJ 08648

732-698-8464

RECEIVED
2013 JUN -7 PM 1:47
MERCER COUNTY
FAMILY CASE MANAGEMENT

A copy of the following has been filed with Superior Court of New Jersey, Justice Center, 175
Broad Street, Trenton, NJ.

1. Notice of Service
2. Proposed Order Form
3. Proof of Service
4. Certification of Motion

A copy of the aforementioned served by email & hand delivery on the Plaintiff:

PLAINTIFF'S COUNSEL:

Edward C. Logan

**3490 U.S. Route 1 N. Suite 7B,
Princeton (West Windsor), NJ 08540**

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the
foregoing statements made by me are willfully false, I am subject to punishment.

DATED: June 7, 2013


Derek C. Syphrett

Derek C. Syphrett

Pro se Litigant

Defendant: Superior Court of New Jersey Chancery Division

252 Fountayne Lane

732-698-8464

KATHRYN BISCHOFF
(aka Katy Elizabeth),
Plaintiff

vs.

DEREK SYPHRETT,
Defendant

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: FAMILY PART
MERCER COUNTY

Docket No.
FV-11-887-13

Notice of Motion

Kathryn Bischoff
79 Wyndahm Place
Robbinsville NJ, 08691

PLAINTIFF'S COUNSEL:

Edward C. Logan
3490 U.S. Route 1 N. Suite 7B,
Princeton (West Windsor), NJ 08540

PLEASE TAKE NOTICE that on Friday the 15th day of April at 12:00 AM, in the forenoon, or as soon as counsel may be heard the undersigned Defendant Derek Syphrett will make an application before the Superior Court of New Jersey, Chancery Division, Family Part, Mercer county, at the Mercer County Court House, 175 South Broad Street, Trenton, New Jersey for an motion which you received on April 15, 2013.

Please take notice that this motion will seek an order for:

1. **DEFENDANT'S REQUEST FOR::** The Plaintiff will provide the limited discovery requested by the Defendant by the following date. Specifically the Plaintiff will provide to the Defendant the text message purported to state that the Plaintiff intended to call the police. The Defendant can not confirm receipt of the same and therefore discovery must be provided to the Defendant as he has no other means to obtain this record _____.

2. **DEFENDANT'S REQUEST FOR:** That the Plaintiff will provide Facebook records or request the same from Facebook Inc. With regard to facebook messages communications between the Defendant and the Plaintiff during the period of 1/15/2013 to 2/8/2013. The Defendant has shown good cause that he has no ability to retrieve these records himself as memorialized on the record 4/25/2013.

3. **DEFENDANT'S REQUEST FOR:** The order of Judge Hoffman dated 2/8/2013 is vacated, null / voided, due to proofs submitted by the Defendant that Judge Hoffman was a current legal adversary of the Defendant as of 2/8/2013. Further the court finds that the Judge Hoffman's involvement was not "absolutely necessary" pursuant N.J.S.A. 2C:25-28a. In fact, on 2/8/2013 the Plaintiff had an opportunity to be heard in Lawrenceville township because a Temporary Restraining Order application can be made in any of four jurisdictions predicated within the New Jersey Prevention of Domestic Violence Act (1991), these include: (1) the Municipality where the alleged victim resides; (2) the Jurisdiction where the alleged suspect resides; (3) the Municipality where the predicated acts of alleged domestic violence occurred; OR (4) at any Superior Court of the Chancery Division containing a domestic violence team / hearing officers. This determination is consistent with an accurate application of case law as prescribed by Rivers v. Cox Rivers (New Jersey Appellate Division).

Further: this court emphasizes here: that the appearance of an impartial judiciary is a pillar of the court system and maintaining such appearances is in the best interest of all parties to this litigation and the public interest.

4. **DEFENDANT'S REQUEST FOR:** The Defendant's immediate appeal will be set for an evidentiary hearing as the Defendant was denied due process per the procedures published by this court. The Defendant was not provided a hearing date after timely filing of his immediate appeal. Specifically the Defendant's motion is granted because:
- a. The Defendant was not informed that his immediate appeal application had been granted by court staff prior to being brought before Judge Warshaw.
 - b. The court did not provide the Defendant an opportunity / time to contact the opposing party after granting the filing for the immediate appeal hearing.
 - c. The only reason cited for Judge Warshaw's decision to deny the immediate appeal via an ex-parte hearing with the Defendant (only) was that the opposing party had not been notified of the hearing date. The Defendant had, in fact, served the opposing party the immediate appeal and notified the opposing party that he intended to provide discovery of the hearing date. Instead, neither party, received written notice of the hearing date. The Defendant wasn't advised that his appearance before Judge Warshaw would in fact be a hearing at all.
 - d. No hearing should have been conducted with out adequate notice to both parties of the scheduled hearing date – which the court never provided to the litigants after the timely filing of an "Immediate Appeal" by the Defendant.
 - e. The Denial of the Immediate Appeal was not issued pursuant the procedural manual for the New Jersey Prevention of Domestic Violence Act (1991) – procedure 4.8.4.
5. **DEFENDANT'S REQUEST FOR:** The Defendant's motion for dismissal on the grounds the Plaintiff's complaint did not contain evidence of the Defendant's intent to harass, nor was diligent

fact finding conducted by Judge Hoffman to confirm the contents of the Defendant's alleged communications. The Plaintiff had an opportunity to read the text messages verbatim over the phone and Judge Hoffman had the opportunity to request the same –neither party attempted to provide proofs of harassment. Further with regard to the Defendant's intent to harass the Plaintiff in the present or the future, no substantiation was provided to the court with regard to the Defendant's state of mind /intent. Absent clear evidence of actual domestic violence, or evidence of an actual threat of future domestic violence the court can not find probable cause simply based on hearsay evidence of a third parties purported / unsubstantiated intent.

6. **DEFENDANT'S REQUEST FOR:** Judge Hoffman's use of leading questions and testimony on behalf of the witness violated court rule 605 – the Judge acted as a witness. Specifically during the Plaintiff's TRO application direct examination was not appropriate. Judge Hoffman stated "And Obviously you felt threatened by that", prior to the Plaintiff stating that she was threatened by anything at all. The testimony which cited a purported threatening text of the Defendant was provided by Judge Hoffman and not the Plaintiff. Judge Hoffman's statement / testimony wasn't in the form of a question, but instead was direct testimony offered on behalf of the Plaintiff. Further the purported text message whereby the Defendant advised the Plaintiff she could contact the police and "shoot first" if she wanted to was simply not a phrase in this context that amounts to a threat. There were no fire-arms involved, neither party owns a fire-arm, there was no threat of retaliation if the Plaintiff, in fact, "shot first". Further, it is clear to this court that the phrase "you can shoot first" was a metaphor for acknowledging the Plaintiff's rights to file a complaint. Under no circumstance can this be perceived as a threat by reasonable people and therefore this court can not find probable cause on such grounds.

7. **DEFENDANT'S REQUEST FOR:** That if the Plaintiff does not respond to this motion (as the Plaintiff has not provided opposition to any of the Plaintiff's prior motions in this matter) that the Defendant's motion will be granted in its entirety by default.

8. **DEFENDANT'S REQUEST FOR:** That the Plaintiff's failure to reply to the Defendant's previous motion / this motion allow this court to issue default findings in the Defendant's favor.

9. **DEFENDANT'S REQUEST FOR:** The court further orders that the trial date will be scheduled for June 13, 2013 or _____ to accommodate the logistics required given either (a) Defendant's right to have an immediate appeal per his timely filing of an application for the same or (b) to provide the Plaintiff time to produce discovery per the Defendant's request or (c)

10. **DEFENDANT'S REQUEST FOR:** Reasonable and equitable relief to the Defendant in the form of:

PLEASE TAKE FURTHER NOTICE: that the Defendant will rely upon the **DELIVERED TO THE PLAINTIFF'S COUNSEL on 4/15/2013** in support within the Notice of Motion and the Defendant's motion for immediate appeal filed with the court on March 1, 2013 and provided to the Plaintiff's counsel subsequently by Judge Marbrey.

PLEASE TAKE NOTICE: That the Defendant requests oral argument in this matter.

Derek Syphrett
Pro Se Defendant

By: _____



June 7, 2013

Derek C. Syphrett

Pro se Litigant

Defendant: Superior Court of New Jersey Chancery Division

252 Fountayne Lane

Lawrence, NJ 08648

732-698-8464

KATHRYN BISCHOFF

(aka Katy Elizabeth),

Plaintiff

vs.

DEREK SYPHRETT,

Defendant

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: FAMILY PART
MERCER COUNTY

Docket No.

FV-11-887-13

**CERTIFICATION OF DEREK SYPHRETT
IN SUPPORT OF:**

MOTION TO:

**ENFORCE LITIGANTS RIGHTS, FOR
EQUITABLE RELIEF, & FOR
RECONSIDERATION**

‡ MODIFICATION OF TRO

DEREK C. SYPHRETT, of full age

hereby certifies the following:

1. I am the pro se litigant, and the indigent pro-se defendant for all matters related to FV-11-887-13.

2. If Judge Marbrey is unable to hear this motion prior to the scheduled FRO trial date, I request it be this motion be transferred / converted to a motion "in limine" and the issue be argued prior to the commencement of discussions related to the circumspct / substantive issues related to the Plaintiff's complaint.

3. Paricularly in regard to my request that Judge Hoffman's involvement in the issuance of the TRO be vacated. Please strongly consider the following:

4. A citizens rights to a "fair trial" are among the most sacred duties of the court. The court can not risk allowing a decision from a ex-parte hearing by a Judge who should have been disqualified to stand. Such a decision diminishes citizen's confidence in the court's themselves.

5. Regardless of whether Judge Marbrey chooses to grant probable cause just as Judge Hoffman did, Judge Hoffman's involvement can not be sanctioned by any court in New Jersey, because

binding case law forbids the same. The lack of an impartial / ex-parte hearing demands redress by the court and the Defendant invokes his right to see this done properly.

6. Additional proofs (exhibits and case law) have been provided that solidly support my request for the same.

SECTION I:
INTRODUCTORY COMMENTS:

7. This motion is both a request for enforcement of litigant's rights, equitable relief and a response to the Court Order of June 5, 2013.

8. This motion has been filed to enforce litigant's rights and preserve litigant's rights for appeal, for relief, and equitable justice (visa vi: a "fair" trial and "fair" pre-trial proceedings).

9. The Defendant maintains that as a civil libertarian he is entitled to consideration of his civil rights as provided by the United States Constitution. Further while the Defendant asserts constitutional sovereignty, the Defendant does not either ratify / dismiss the application of the court's rules upon the Defendant. The Defendant does however, expect the court, and officer's of the Court, such as Ed Logan and Judge Marbrey to fully abide by the court rules and/or exercise "reasonable" discretion with regard to the court rules. The Defendant further asserts the court is bound to apply the doctrine of the "liberal civil construct" to ensure the Defendant's access to the Court as an indigent, pro-se litigant, with a confirmed weekly income of \$0 as of 6/6/2013.

SECTION II:
DEFINITIONS & LEGAL TERMS:

I. N.J.S.A. 2C:25-28a: referred to both as noted by this heading and as "NJ PVDA" or "PVDA"

II. New Jersey Prevention of Domestic Violence Act (1991): Heretofore: referred to as "NJ PVDA", or "PVDA", or "N.J.S.A. 2C:25-28a".

III. - Rivers v.Cox-Rivers, 346 NJ, Super. 418, 421, n.1. 788 A. 2d 320 (App Div. 2001): Referred to both as the aforementioned heading & "Rivers' Case"

SECTION III:
REQUESTS & LEGAL ARGUMENT:

10. I request the court clarify the record with regard to Judge Hoffman's issuance of a TRO. Judge Hoffman's decision to issue the TRO must be invalidated (even if the decision is subsequently / currently viewed to be a valid ruling per the discretion of the Honorable Judge Marbrey). Judge Hoffman's participation in the ex-parte TRO decision represents an obvious violation of court rule 1:12-1(g) and the judicial Canon's with regard to the impartiality of a Judge participating in legal matters.

11. Contrary to the court order findings included in the order of this court on 6/5/2013: Judge Debello stated on the record that he had familiarity with the Defendant. Further Judge Hoffman's familiarity was confirmed by evidence (NOW BEFORE THIS COURT) that clearly show's Judge Hoffman's familiarity with the Defendant and Judge Hoffman's adversarial relationship with the Defendant – memorialized via a letter received from Judge Debello, dated February 5, 2013 - ***SEE EXHIBIT A.***

12. The Letter from Judge Hoffman and sent to Judge Debello, memorializes that: Judge Hoffman's initiation of a legally adversarial relationship with the Defendant on or prior to 2/5/2013 and only 3-days prior to the Plaintiff's ex-parte hearing / complaint before Judge Hoffman.

13. I again reiterate that in addition to being a legal adversary, Judge Hoffman has repeatedly shown me discourtesy prior to the issuance of the TRO before this court. While acting as an attorney Judge Hoffman, yelled at me on 12/12/12 simply for serving him a subpoena and he threatened me by saying that I could "never talk to [him] in public again". This incident was witnessed by several people in the lobby on the 4th floor including the officer who was present in the lobby at that time. Shortly, there after I informed other witnesses (Judge Fitzpatrick's court officer – who was later in the lobby, and the Omsbudsman's office secretary what had occurred). I will gladly call these people into this court as witnesses to support my certification if Judge Marbrey will not accept my sworn testimony as a preponderance of evidence that Judge Hoffman has shown the Defendant past discourtesy, bias, and hostility.

14. Further, note that there is no possible way that I could be making up the interactions between myself and Judge Hoffman in reaction to the Plaintiff's TRO. The witnesses listed above either witnessed Judge Hoffman's actions or received my comments regarding the same nearly 2-months prior to the existence of the TRO order.

LEGAL ARGUMENT / REPLY TO COURT ORDER OF JUNE 5, 2013:

15. **Below I've provided an outline of legal my legal argument, which requires further review and consideration by this court. I have also attached exhibits supporting my cause of action in this regard.**

16. Please note: I sincerely appreciate the efforts of Judge Marbrey to research the issue put before her via my prior motion. Further, without any implicit or explicit attempt to gain favor I commend Judge Marbrey for the detailed findings provided in her order of June 5, 2013 and I commend her for putting forth such effort, and providing clarity with regard to the aforementioned order. It is quite refreshing to see a Judge in this vicinage that is capable of producing a Court order of this quality and detail. I continue to be thoroughly impressed with her Honor's conduct and diligent work.

17. That said, have found significant and material legal grounds to oppose portions of the June 5, 2013 ruling.

18. Below I have provided detailed legal arguments that unfortunately require the court to take additional action visa vi binding case law and "bright line" exceptions explicitly provided by the case law of higher courts in this jurisdiction.

19. I feel confident Judge Marbrey will continue to exercise her unusual (in this vicinage) diligent review of the legal issues and subsequently grant part or all of this motion for "good cause shown".

REQUESTS / DEMANDS TO THE COURT:

- JUDGE HOFFMAN'S DECISION MUST BE VACATED, REGARDLESS OF JUDGE MARBREY'S VALIDATION OF THE SAME. THERE IS A REQUIREMENT FOR NULITY HERE.

- THE PROBABLE CAUSE DECISION OF JUDGE MARBREY, MUST BE CLARIFIED PER ESTABLISHED CASE LAW REGARDING THE "NJ PVDA"

- THE DEFENDANT WILL ACCEPT A PROBABLE CAUSE FINDING BY JUDGE MARBREY, BUT NOT BY JUDGE HOFFMAN – GIVEN THE BRIGHT LINE’S ESTABLISHED BY THE HIGHER COURTS WITH REGARD TO JUDICIAL CONDUCT.

- IF JUDGE HOFFMAN’S TRO ISSUANCE IS NOT VACATED BY JUDGE MARBREY AS A RESULT OF THIS FILING AND ASSOCIATED PROOFS SUBMITTED – THEN - I REQUEST LEAVE TO FILE AN APPEAL, SO THAT THE APPEALATE COURT CAN RULE ON THIS ISSUE AND ADDRESS THE NEED FOR BINDING CASE-LAW ADDRESSING MATTERS OF THIS NATURE.

o No Judge who chooses to be a legal adversary to a litigant (as Judge Hoffman did) should be allowed to act as judge when such action is not necessary by law.

o A Judge whom can not recall his legal adversaries within 3-days of announcing a legal action against an adversary (like Judge Hoffman), with all due respect, may not even be fit to be on the bench in the first place.

o The Case Law cited below makes it clear that a Judge Should be disqualified whether or not the same Judge can recall his past legal involvement as a legal advocate / adversary in the past.

20. I too cite the comprehensive case law within Rivers v. Cox-Rivers. However. Note: I believe Judge Marbrey simply erred in her citation of Rivers v. Cox-Rivers (“Rivers’ case”). Despite her Honor’s presumed good-faith effort to address these issues ~~rather~~ by citing a portion of the “Rivers’ case” that is not applicable to this matter as was cited in the June 5, 2013 ^{ORDER} ~~I HAVE~~ CITED CASE LAW INCLUDED IN THAT CASE WHICH APPLIES IN THE DEFENDANT’S FAVOR:

See These Rivers v.Cox-Rivers, 346 NJ, Super. 418, 421, n.1. 788 A. 2d “Rivers’ Case” Citations:

“We vacate the February 23, 2001 order because of the need to apply a bright-line rule:

Except when required by the rule of necessity,⁽¹⁾ where a judge has previously represented one of the parties in a matter before him against the other, any judicial action taken is a nullity, whether the conflict comes to light during the proceedings before an order enters or reasonably soon following the conclusion of the matter after an order has been entered. See N.J.S.A. 2A:15-49b; R. 1:12-1(c), (f). **That result is required by the need “to maintain public confidence in the integrity of the judicial process, which in turn depends on a belief [by litigants and the general public alike] in the impartiality of judicial decisionmaking.”** State v. Kettles, ___ N.J. Super. ___, ___ (App. Div. 2001) (slip op. at 5) (quoting United States v. Nobel, 696 F.2d 231, 235 (3d Cir. 1982), cert. denied, 462 U.S. 1118, 103 S. Ct. 3086, 77 L. Ed. 2d 1348 (1983) (alteration in original)). We hold further, as we did in Kettles, that the conflict is non-waivable by the parties, either expressly or implicitly. If a judge is precluded from presiding over a matter in which a former client is involved, especially where the current adversary is the party against whom the prior representation occurred, any action taken by the judge as a result of the proceeding cannot be recognized as valid.”

Although the principle on which we rely was applied in Kettles and Nobel in criminal prosecutions, see also State v. Tucker, 264 N.J. Super. 549, 554-55 (App. Div. 1993), certif. denied, 135 N.J. 468 (1994); State v. Horton, 199 N.J. Super. 368, 374-77 (App. Div. 1985); Mustafoski v. State, 867 P.2d 824, 835-36 (Alaska Ct. App. 1994), the

public policy imperatives are the same in civil cases. See, e.g., Sharp v. Howard County, 607 A.2d 545, 551 (Md. 1992) ("When a judge has appeared as counsel in an earlier stage of the same adversarial proceeding, there is no question that the judge has advocated the client's cause, and recusal is automatic because of the danger of an appearance of partiality."); Murray v. Murray, 424 N.Y.S.2d 50, 51 (App. Div. 1980) (Where a party had previously consulted the judge as a practitioner about "marital difficulties and child support," but had not retained her, the judge was nevertheless required to disqualify herself from presiding over a divorce case involving the same parties.); Cummings v. Christensen, 439 N.Y.S.2d 825 (Fam. Ct. 1981) (Where the judge had previously been involved as law guardian for the children in a marital custody proceeding, disqualification was required in a subsequent suit involving the same parties. Neither disclosure nor consent could cure the conflict and the required recusal.). To the extent Bonnet v. Stewart, 155 N.J. Super. 326 (App. Div.), certif. denied, 77 N.J. 468 (1978), can be read to stand for a different result, we regard it as distinguishable on its facts. In Bonnet, there was no identity of both parties in the litigation at hand with both parties in the prior proceeding. Here, not only are the parties identical but the underlying subject matter is the same, *i.e.*, the marriage and the parties' rights stemming therefrom. Even if waiver of the conflict had been possible in the instant matter, there was no at-length discussion of the problem in the trial court proceeding before us, as there had been in Bonnet with a resolution on different factual dynamics that could be taken as a waiver by both parties of their rights to invoke the disqualification imposed by N.J.S.A. 2A:15-49b and R. 1:12-1(c), (f)."

- a. The citations above make it clear that a Judge that has been /is legally involved in separate litigation should not then later preside over matters involving that litigant.
- b. Further: it is common for part-time judges to recuse themselves from matters involving only 1-party which they have been involved in past/present litigation with.
 - i. In addition to the above: Judge Hoffman is a current legal adversary of mine.
 - ii. In addition to the above: Judge Hoffman elected to become my legal adversary rather than being thrust into that position by an adversarial action on my part.
 - iii. In addition to the above: In most of the cases cited above the court has made it clear that past or present adversarial relationships, or simply a familiarity with a litigant by way of ex-parte consulting is grounds for disqualification of a Judge from a proceeding.
 - iv. In addition to the above: Judge Hoffman has previously been involved with a domestic violence complaint which I filed against my wife in 2010.
 - v. In addition to the above: Judge Hoffman was aware that I am deeply disturbed at his failure to issue a TRO given the recordings of my wife hitting me in my home and attempting to harass me for over an hour. My wife was subsequently charged with harassment and I was damaged after the TRO was denied.

- vi. In addition to the above: I've seen Judge Hoffman disqualify himself when presiding over traffic offenses involving the RELATIVES of people he's represented (when there has been no direct legal connection between Judge Hoffman and the accused relative).
- vii. In addition to the above: While the moving party in the Rivers' case did not raise an objection in any hearing, the Defendant in this case has raised the issue of disqualification of the a Judge as soon as was practicable.
- viii. In addition to the above: Due to the peculiar use of ex-parte hearings via the NJ PVDA I was unable to raise my objection to Judge Hoffman's participation until after he heard the matter put before him. This is unfair, my objection and requested relief for Judge Hoffman's order to be ruled null / vacated is the appropriate remedy now that I am present and able to address the issue with the court.

21. Judge Marbrey's citation of: Rivers v. Cox-Rivers, 346 NJ, Super. 418, 421, n.1. 788 A. 2d 320 (App Div. 2001) is clearly well-intended, but IT IS NOT not applicable to the case before Judge Marbrey. **SPECIFICALLY: The court's assertion, here, that Judge Hoffman's participation was "absolutely necessary" and that "by disqualification there would be no means of proceeding" IS FALSE. THIS PROFFER BY THE COURT IS REFUTED BY FACTS SPECIFIC TO N.J.S.A. 2C:25-28a proceedings (see below):**

- a. In fact, under the "NJ PVDA" / N.J.S.A. 2C:25-28a: there is a pathway and potential to proceed with a complaint in one of two jurisdictions. This pathway was available to the Plaintiff. Note that the NJ PVDA allows complaints to be filed in the jurisdiction of the alleged predicated acts, OR in the jurisdiction of the alleged suspect.
- b. In the case of Bischoff v. Syphrett, **THIS CLEARLY AND UNEQUIVACABLY MEANS: Kathryn Bischoff could have filed her complaint in Lawrenceville, NJ, 08648** and participated in a ex-parte TRO hearing before a different Judge. If Judge Hoffman had

instructed the Plaintiff to do so, then a proceeding could have been held before an un-related and presumably impartial Judge in the Lawrenceville Jurisdiction.

- c. In Cox v. Rivers-Cox, the parties lived within the same jurisdiction and therefore the factual basis in that case differs materially from the factual basis in this matter with regard to the legal issue “*absolute necessity*” proffered by Judge Marbrey. **In this case of (Bischoff v. Syphrett): a proceeding before Judge Hoffman was NOT an “absolute necessity” under the applicable statute – N.J.S.A. 2C:25-28a covering the jurisdiction for a complaint of this nature.**
- d. Also - in Cox v. Rivers-Cox: The issues were summarized by the court in the following manner:

“We apply a bright-line rule: Except when required by the rule of necessity, where a judge has previously represented one of the parties in a matter before him against the other, any judicial action taken is a nullity, whether the conflict comes to light during the proceedings before an order enters or reasonably soon following the conclusion of the matter after an order has been entered. A post-divorce-judgment order entered on February 23, 2001 after a plenary hearing is vacated and the matter remanded for consideration by another judge where the disqualifying conflict, in a single court appearance more than thirteen years before unrecalled by the judge, did not come to light until a motion for reconsideration was made.”

Note: *The underlined portions in the above quote were added by the Defendant, to emphasize substantial differences between the Cox v. Rivers-Cox case than presented by the facts of the matter before this court (Bischoff v. Syphrett).*

Further Note Also:*(1) In this matter, there was no court rule necessitating Judge Hoffman’s exclusive Jurisdiction over the matter before the court”; (2) the issue in this case is not one “a judge serving as an attorney for one of the two litigants involved”. (3) It is not a post-divorce matter. Instead in Bischoff v. Syphrett there is a “current conflict” between a Judge and one of the litigants. Judge Hoffman elected to become LEGAL ADVERSARY OF THE DEFENDANT about 3-days prior to issuing an decision adverse to the Defendant . (4) The Adversarial relationship between the Judge and the Defendant existed: PRIOR TO THE INITIATION OF ANY LITIGATION BETWEEN THE PARTIES IN THIS CASE to the initiation of any legal action between the parties in Bischoff v. Syphrett. (5) The material differences between the Cox v. Cox-Rivers case and this one requires the court to reconsider the court’s application of case law that is materially different than this legal matter. (6) No “reasonable” litigant would NOT have “reasonable” concern (pursuant court rule 1:12-1(g) given the circumstances in Bischoff v. Syphrett.*

- e. Lawrenceville’s Judge is the Honorable Judge Kevin Nerwinski, AND Judge Nerwinski is not a legal adversary of the Defendant as Judge Hoffman was as of 2/8/2013 (and earlier).

- f. None of the cases three cases related to the specific quote cited by the court in Cox. v. Cox-Rivers address: the concurrent and duplicate jurisdictional pathways available to the Plaintiff in Bischoff v. Syphrett, visa vi *N.J.S.A. 2C:25-28a*.
22. Regarding the citation of the quote included on: in paragraph 1, page 5, of the June 5, 2013 Court Order attributed to: *Pyatt v. Mayor and Council of Dunellen*, 9 N.J. 548, 557 (1952).
- a. This quote was cited in the above referenced matter (1952) – a non-domestic violence, “non-Superior Court – Family-Part” case. The quote was in fact a reference to a case heard in 1936 prior to the advent of the *N.J.S.A. 2C:25-28a*. The quote was only cited in *Pyatt v. Mayer*(et. Al) and was originally issued in relation to a different matter which was also unrelated to an application of jurisdiction visa vi the NJ PVDA.
23. The quote is actually from from the case: *Downs v. Mayor & Common Council of the City of South Amboy*, 116 N.J.L. 511, 515 (E. & A. 1936), it also did not involve litigation related a “quasi-criminal” proceeding pursuant to *N.J.S.A. 2C:25-28a*, in which, the Plaintiff’s had the ability to be heard in one of three defined jurisdictions either: 1. The Jurisdiction in which she lived; 2. the jurisdiction in which the accused lived, 3. The Jurisdiction where the predicated act occurred. Effectively, the Plaintiff’s complaint afforded her at least two distinct jurisdictions, and possibly a third if she was traveling in a third Jurisdiction when in she received of the alleged communications, from the Defendant
24. **CONCLUSION WITH REGARD TO RIVERS V. COX-RIVERS APPLICATION TO THIS MATTER:**
- a. There was NOT ANY “absolutely necessary” involvement required of Judge Hoffman as a result of the above legal argument. Judge Marbrey’s findings with regard to her citation that there was an “absolute necessity” for Judge Hoffman’s involvement are thereby completely refuted, and Judge Marbrey’s assertion is legally flawed.
- b. **AGAIN: JUDGE HOFFMAN: IS & WAS A LEGAL ADVERSARY OF THE DEFENDANT, WHEN HE PRESIDED OVER A MATTER INVOLVING THE**

DEFENDANT. JUDGE HOFFMAN HAD DIRECT CONTACT WITH THE DEFENDANT AND THREATENED THE DEFENDANT PRIOR TO ISSUING A TRO AGAINST THE DEFENDANT.

- c. The resulting litigation spawned by Judge Hoffman's involvement, definitively benefit's Judge Hoffman's legal position as an adversary as it distracts the Defendant from the demands of the litigation between Judge Hoffman and the Defendant, which is still pending.
 - d. Judge Hoffman has an economic interest in the Defendant's inability to address the pending litigation, as any diminished ability of the Defendant to prepare for trial, could possibly result in Judge Hoffman NOT being required to appear in court, during hours that Judge Hoffman typically profits from economically while working as a attorney. This is definitively a conflict of interests between Judge Hoffman and the Defendant.
 - e. ***The circumstance in Bischoff v. Syphrett is CLEARLY & SUBSTANTIALLY DIFFERENT THAN THE ISSUES IN Cox v. Cox-Rivers. Judge Hoffman enjoyed no exclusive or necessary jurisdiction to address the matter before him.***
25. With regard to Judge Marbrey's findings regarding Judge Hoffman and the Plaintiff's statements made on the record during the 2/8/2013 ex-parte hearing:
- a. **JUDGE HOFFMAN'S PURPORTED STATEMENT OF "NOT" BEING FAMILIAR WITH THE DEFENDANT'S NAME:**I have listened to the recording and believe it is not discernable to my ears with regard to whether or not Judge Hoffman claimed to be familiar with my name. Initially, upon my first hearing of the recording I was certain that he said he was familiar with my name. However, upon receipt of Judge Marbrey's court order I've re-played the audio and it is not conclusive to my ears exactly what Judge Hoffman said. Regardless the case law cited above makes it clear that regardless of Judge Hoffman's recollection his role as a legal adversary requires his order to be vacated.
 - b. **JUDGE HOFFMAN DID ASK LEADING QUESTIONS OF THE PLAINTIFF DURING HIS PROCEEDING – THIS WAS DEFINITELY IMPROPER FOR DIRECT**

EXAMINATION: Ms. Bischoff did not state that she was threatened by my comments regarding her legal right to file a complaint with the police. With regard to this matter the Defendant stated "... shoot first". The Judge then "led" the Plaintiff by saying "and obviously you felt threatened by that". The Plaintiff replied "yes". It was not the Plaintiff who asserted she felt threatened, but Judge Hoffman. Further within the context of the Defendant's purported statement there was no predicated / reasonable threat to

- i. The Plaintiff. The Defendant had simply agreed that the Plaintiff could file a police complaint "shoot first". Given that neither the Plaintiff or the Defendant possess any fire arms it is unclear to a reasonable lay person, how this statement can be construed as a threat.
- ii. Frankly, I am shocked and alarmed that either the Plaintiff or this court would suggest the phrase "you can shoot first" is in anyway threatening. I've been in business meetings where this phrase has been used by others and it hasn't once frightened me when people like Jonatan Simon of JP Morgan Asset Management said to me "so, Mr. Syphrett would you like to shoot first or would you like us to".
- iii. In a context where fire arms are not mentioned, present, or a implicitly available such a phrase is certainly a clear metaphor for "take action". Suggesting that the Plaintiff was free to take action as suggested by the Defendant was not a threat at all. It was an acknowledgement of the Plaintiff's legal right to complain to the police. Any representation otherwise is frankly outrageous and beyond the context of the Plaintiff's complaint or my actual statement.

**OTHER LEGAL ARGUMENTS SUPPORTING DISMISSAL OF TRO / AN ORDER
VACATING ONLY JUDGE HOFFMAN'S FINDING OF PROBABLE CAUSE**

26. With Regard to the Plaintiff's claims that she felt threatened by my communications post-romantic break-up. These claims are not reasonable because at no time did the Plaintiff cite any specific threat of future domestic violence. The Presumption that a woman will be violated in the future without such threats are not credible and such presumptions are not appropriate within the court room or elsewhere. There was no history of past "domestic violence", while the Plaintiff is free to argue there was domestic discord, typical of many post-romantic relationships, any claims that there was a credible

threat to her well-being is certainly not specified in her complaint. While the Plaintiff and Judge Hoffman suggest a fearful state of mind of the Plaintiff, it is not corroborated by an actual threat of domestic violence. To this point the court should again review Silver v. Silver and State v. Hoffman (1998) to become familiar with the New Jersey Supreme Court's binding guidance that acts of "domestic violence" can not be predicated upon harassment if there is not evidence that the accused has an intent to harass the alleged victim, or that the accused is likely present a future threat to the alleged victim.

27. With Regard to the Plaintiff's concerns for her children, she again here did not cite any specific or reasoned concern: While the Plaintiff is aware just as the Defendant is that the children were never harmed by the Defendant. Further the Plaintiff was quite comfortable having the Defendant create "crafts and art projects" with her children in the past, and Christmas tree shop. It is unclear how the Defendant's alleged presence at the Plaintiff's front door, could have harmed her children had they been present or how the text messages or phone calls represented a threat to the Plaintiff's children. There is no explanation given by the Plaintiff for her irrational fears for her children's well-being or the Defendant's conduct and any predicated act of domestic violence related to the children.
28. Even if all the Plaintiff's statements are accepted as true, there is no evidence that she was likely to become a victim of domestic violence based on the statements attributed to the Defendant.
29. Let us not forget the serious intent of the legislature (per Silver v. Silver and State v. Hoffman) with regard to the purpose of the NJ PVDA. The NJ PVDA was intended to protect people from being assaulted and battered – it was not intended to be applied to post-romantic domestic discord. The Plaintiff clearly has a better legal argument to pursue harassment charges via 2C: 33-4, than a legal argument for "domestic violence". Even then it is unlikely the Plaintiff has a valid legal claim *visa vi* 2C:33-4. The Plaintiff offered no testimony or specific proffer with regard to the Defendant's intent to harass her. Let us not forget that intent is also a required element for both 2C: 33-4 and the "NJ PVDA". This question / legal issue remains unaddressed by the TRO hearing and remains unaddressed in the Plaintiff's complaint.

30. Granted the Plaintiff allegedly became fearful of the Defendant. That is frankly, not grounds for a restraining order lacking the other required elements of harassment / a predicated act associated with the NJ PVDA.
31. HEARSAY & THE INAPPROPRIATE ADMISSION OF THE SAME BY JUDGE HOFFMAN:
Regardless of the legislatures overly generous allowance for ex-parte hearings prior to the issuance of a TRO, it remains a fact that hearsay regarding another person's intent without the testimony of an expert witness is legally suspect per the N.J.R.E. rules 801-808. It is frankly a poorly explained aspect of the NJ PVDA. How can one prove intent / or even suggest probable cause of intent from text communications that explicitly stated "I do not want to harass you" – not withstanding the Plaintiff excluded that part of the texts from her complaint – but still without an overt act of domestic violence and / or threats of future domestic violence the Plaintiff's and Judge Hoffman's presumptions about the Defendant's intent are simply unsupported hearsay.
32. WHERE IS THE EVIDENCE: While the Plaintiff provided sworn testimony, she provided no authenticated text messages, and no non-authenticated evidence to support her testimony. I've frankly, yet to be in a court room where the verbatim statements contained in a email or text were accepted to be true simply on the word of a lay-person witness. In this case it is more troubling because apparently neither the police or Judge Hoffman bothered to ask the Plaintiff to read the text messages verbatim, or provide the text messages which were presumptively on her person while she was at the police station. I've never sent he Plaintiff go anywhere without her cell phone, nor did she state that she didn't have it with her at her home or at the police station when the police were present on 2/8/2013.
33. The lack of fact finding by Judge Hoffman further undermines the finding. This court's acceptance of these deficiencies sets a dangerous precedent for all the men of this jurisdiction who are in romantic relationships. If the court doesn't demand evidence from alleged victims when they make complaints (as is typically required of other litigants), then we've lost the rule of law in this jurisdiction and we've created the potential for rampant abuse of this legal process.

34. I'll conclude by saying while the issuance of a TRO is not considered to be a serious deprivation of liberty, in fact, in this case it most certainly has been. This TRO has been a massive distraction for me and my custody litigation. It has taken time that should have been reserved for the "Best interests of my children". It has constrained my ability to travel freely and shortened my scheduled attendance at my brother's wedding in Dallas Texas. If the court is going to insist on inconveniencing litigants such as myself with TRO's that are broadcast far and wide via electronic databases that impact the accused anytime they are stopped by police, the court should do so with prudent discretion and after receiving proofs or SIGNIFICANT allegations of actual threats, or confirmation of any readily available evidence supporting a Plaintiff's claim. In, again in this case the court and police didn't even bother to review the actual text messages and instead found it easier to simply issue a TRO without any diligent fact finding with regard to the actual communications underlying the issuance of this TRO.
35. The courts are required by rule to be both expedient and diligent. In the case of the issuance of the TRO the court was simply expedient and simply wrong.


OBJECTION TO THE DENIAL OF MY IMMEDIATE APPEAL

36. I request Judge Marbrey review the transcript of Judge Warshaw's denial of the TRO immediate appeal. I served the Plaintiff a copy of the Immediate Appeal prior to requesting a hearing through the domestic violence team. Judge Warshaw stated that I had to notify the Plaintiff of the date and time of the Immediate Appeal hearing.
37. In fact the Prevention of "Domestic Violence Procedural Manual" does not require litigants to provide the date and time of the hearing. In fact the procedure manual says that after an Immediate Appeal is filed the court is supposed to advise both parties of the date and time for the hearing. It was never my responsibility per the NJ PVDA procedure manual to advise the Plaintiff of the date and time for the immediate appeal hearing. It was actually Judge Warsaw's responsibility to respond to my "immediate appeal" by setting a hearing date, rather than holding an ex-parte hearing to dismiss the "immediate appeal". **See Exhibit B / "Page N-8" of the manual procedures 4.8.1 – 4.8.4.**

38. Additionally, please note that Judge Warshaw did not follow any of the procedures contained here. He did not (1) set a date after both parties had been notified of the granting of the Immediate Appeal AND (2) He did not issue a denial on the ex-parte "Appeal of Ex-parte hearing" Order Form.
39. If this vincinage has decided to deviate from the NJ PVDA manual than the Mercer County vincinage needs to publish the local court rules for litigants – especially pro-se litigants who are not made familiar with the local rules via experience or Bench Bar Association meetings.
40. I therefore request my immediate appeal be heard prior to the trial date, as I wish to preserve my legal rights, and have every right to expect the court to follow proper procedure.
41. **PREMATURE CONCLUSION REQUIRED BY COURT RULES:** At this point please note that the Court rules for page limits have constrained my ability to fully address my pleas related to my proposed order form. I therefore request: oral argument to address the other proposed orders attached to this certification. In what space is left I further assert that my plea for amended discovery requests be granted pursuant Crespo v. Crespo (New Jersey Supreme Court). Note of course: the certifications page limit is 15 pages by court rule for a motion filed in the Superior Court, Chancery Division, Family Part.
42. Lastly, please be advised that I am well aware that my cautious, prudent, and diligent advocacy of my rights – IN ADDITION TO – my principled practice of a conservative form of civil libertarianism, results in atypically intensive litigation. I maintain that is my right and responsibility and I hope the court respects my position albeit unusual. I mean no disrespect to the court or my adversary. I also refuse to show disrespect to my own civil rights by conceding legal arguments, simply to appease presumed expectations of the Court or the Plaintiff that my rights are less important than a quick resolution of the proceeding. My rights and enforcement of them remains my sole concern.

I hereby certify that all of the foregoing statements above are true. I am aware that if any of the foregoing statements are willfully false that I am subject to punishment.

DATED: June 7, 2013


Derek C. Syphrett

SUPERIOR COURT OF NEW JERSEY
MERCER VICINAGE

Exhibit A

Lawrence P. DeBello
Judge
(609) 571-4312
(609) 571-4313



Mercer County Courthouse
P.O. Box 8068
Trenton, NJ 08650-0068

February 5, 2013

Lindsay Burbage
Township Attorney
Hamilton Township Department of Law
2090 Greenwood Avenue
Hamilton, N.J. 08650

Re: Wallace vs. Syphrett
Docket No. FV-11-625-13

Dear Mr. Burbage:

This will acknowledge receipt of your Motion to Quash Subpoena served on Hamilton Township Municipal Court Judge R. Douglas Hoffman. Please be advised that, at this time, your motion is not being scheduled, since the trial date of the domestic violence matter has not been rescheduled at this time. The degree of Mr. Syphrett's participation in that trial is also undetermined at this time. When a trial date is scheduled, your motion will be scheduled advance thereof.

Very truly yours,

Lawrence P. De Bello, Judge
Superior Court of New Jersey

LPD/ejk
cc: Derek Syphrett

Exhibit B

- (1) execute service on the defendant, or
 - (2) immediately bring or fax the order and related documents to the sheriff or other designated law enforcement agency in the municipality in which the defendant resides or works so that it can execute service accordingly.
- C. The return of service should then be faxed back to the sheriff's department or other designated law enforcement agency in the issuing county, which in turn must immediately deliver or fax the return of service to the Family **Part** in the issuing county.
- 4.7.2 Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO must be filled out by the sheriff's department or other designated law enforcement agency and immediately faxed or returned to the Family **Part** prior to the scheduled final hearing date.
- 4.7.3 When an order must be served on a defendant who is out-of-state, the law enforcement officer or agency or court staff should contact the State Police or Family Court in the other state to determine the procedures for service in that state (Appendix 29 and 30).

4.8 APPEALS OF EX PARTE ORDERS

- 4.8.1 *N.J.S.A. 2C:25-28(i)* provides that any TRO is immediately appealable by plaintiff or defendant for a plenary hearing *de novo*, not on the record below, before any Superior Court, Family **Part** Judge in the county where the TRO was entered if that judge issued the temporary order or **has** access to the reasons for the issuance of the TRO and sets forth on the record the reason for the modification or dissolution.
- 4.8.2 Upon receipt of a request for an emergent appeal, staff shall obtain the reasons for the request of appeal and assist the appealing party in completing the "Appeal of *Ex Parte* Order" (See Appendix 8), and present the request with the file to the judge for consideration.
- 4.8.3 If the application is granted, **an** emergent hearing will be scheduled with adequate notice to both parties as to the purpose of the hearing and the issues to be addressed. The judge must place the reasons for continuing, modifying or dissolving the TRO on the record.
- 4.8.4 If the application is denied, the reasons shall be set forth by the judge on the "Appeal of *Ex Parte* Order" form and the FRO hearing will proceed as initially scheduled.

Exhibit C

A True Copy

Sue Regan

PREPARED BY THE COURT

Kathryn Bischoff,

Plaintiff,

v.

Derek Syphrett,

Defendant.

SUE REGAN

Deputy Clerk of Superior Court

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - FAMILY PART
MERCER COUNTY

DOCKET NO. FV-11-000887-13

ORDER

This Matter having come before the Court, the Honorable Janetta D. Marbrey, J.S.C. presiding, on the motion made by the defendant, Derek Syphrett, a self-represented litigant, to dismiss the Temporary Restraining Order entered on February 8, 2013; and the Court having considered the arguments made in support of the dismissal; and the Court having reviewed the audio and documentary evidence in support of the dismissal; and for good cause shown;

IT IS on this 5th day of June 2013; ORDERED as follows:

1. Defendant's motion to dismiss the Temporary Restraining Order entered on February 8, 2013 is DENIED.
2. The Temporary Restraining Order entered on February 8, 2013 remains in full force and effect pending the Final Restraining Order hearing.

CLERK OF SUPERIOR COURT
SUPERIOR COURT OF N.J.
MERCER COUNTY
RECEIVED AND FILED

JUN 05 2013

Sue Regan

SUE REGAN
DEPUTY CLERK OF SUPERIOR COURT

Janetta D. Marbrey, J.S.C.

the defendant's last name twice. Judge Hoffman responded that "they don't sound familiar, um, I guess put her on."

Once the plaintiff picked up the phone, Judge Hoffman introduced himself, briefly explained the ex-parte temporary restraining order procedure, placed the plaintiff under oath, and began the hearing. Judge Hoffman started by asking the plaintiff about her pedigree information. He asked the plaintiff for her name, where she lived, who she lived with, her age. He continued by inquiring about the plaintiff's relationship with the defendant. The plaintiff stated she formerly dated the defendant. She stated the relationship began in November and ended around mid-January.

Next, Judge Hoffman asked the plaintiff what happened that night that caused her to come to the police station. The plaintiff responded that the defendant had been texting her almost constantly. She stated she sent him a text message asking him not to text her anymore, but he continued to text her anyway. Furthermore, the plaintiff stated the previous Wednesday night that the defendant came to her house uninvited. He knocked on the door and continued to knock on her door and scream her name even after she told him he was scaring her.

According to the plaintiff, the following day she sent the defendant a text message that said, "I found it really alarming that you came to my house, um, and unannounced and wouldn't leave, and um, if you continue to contact me, any contact at all, I'm going to seek police intervention."

Nonetheless, the following day the defendant called the plaintiff from a private telephone number. The defendant identified himself as the caller, and the plaintiff immediately hung up the phone. The plaintiff then received numerous text messages from

Pursuant to Rule 1:6-2(f) the Court provides the following Statement of Facts and Conclusions of Law:

On or about February 8, 2013, the plaintiff, Kathryn Bischoff, went to the Robbinsville Police Department seeking a temporary restraining order. The audio recording of the temporary restraining order hearing, which was supplied to the Court by the defendant, Derek Syphrett, begins with Patrolman Markowski, of the Robbinsville Police Department, calling to speak with the Honorable Douglas Hoffman, J.M.C. Patrolman Markowski stated the reason for his call was that a woman came to the police station requesting to file for a Temporary Restraining Order due to a domestic dispute.

After Judge Hoffman instructed the officer about what number to call him in the future, Judge Hoffman began to ask the officer the pedigree information about the litigants. First, Judge Hoffman asked the officer if the parties are husband and wife or boyfriend and girlfriend. The officer responded boyfriend and girlfriend. Then, Judge Hoffman asked whether the parties live together. The officer responded that the parties do not live together.

Judge Hoffman then asked about any children. The officer responded that the parties do not have any children in common but the plaintiff has children from a previous marriage. Next Judge Hoffman asked about any priors. To which the officer responded no. Judge Hoffman then asked if a weapon was involved. The officer responded that no weapons were involved. The last pedigree question the Judge asked of the officer was the names of parties. The officer stated the plaintiff's first and last name clearly. He then stated the defendant's first name, paused for a few seconds, and attempted to pronounce

the defendant. The plaintiff testified that in this series of text messages the defendant said "talk to the police if you want... this will be catastrophic for me.. but shoot first I've got nothing to lose." Thereafter, the plaintiff stated she "felt threatened because of my two little girls and like I know that he doesn't even have visitation with his own and he's obviously like relentless, I've tried everything to get him to stop and he's just not."

Judge Hoffman asked to speak with the officer after the plaintiff testified about why she was afraid of the defendant. He instructed the officer how to fill out the temporary restraining order. Then, Judge Hoffman gave the officer a return date for the final restraining order hearing.

There are four primary basis to the defendant's Motion to Dismiss. First, that the temporary restraining order was granted in an improper ex-parte hearing. Second, the defendant believes Judge Hoffman should have recused himself from the temporary restraining order hearing because he is an adversary in a separate legal proceeding. Third, the defendant believes there was an insufficient investigation to the allegations brought by the plaintiff in support of her request for a temporary restraining order. Defendant's last contention is that the allegations contained in the plaintiff's request for a restraining order were insufficient to warrant the issuance of a temporary restraining order.

The Court may issue temporary restraining orders, including ex-parte temporary restraining orders. N.J. Court Rules, R. 5:7A., N.J.S.A. 2C:25-17 et seq. Such relief may also be considered by the Court over the telephone based upon sworn oral testimony of an applicant. N.J. Court Rules, R. 5:7B. However, ex-parte temporary restraining order may only be granted if it appears that the plaintiff is in danger of domestic violence.

N.J.S.A. 2C:25-14b. The Appellate Division has affirmed this statutory basis for ex-parte temporary restraining order hearings Grant v. Wright, 222 N.J. Super. 191.

In the case at hand, Judge Hoffman presided over a telephonic ex-parte temporary restraining order hearing. As noted above, the plaintiff testified that after she asked the defendant to stop contacting her, but the defendant continued to contact the plaintiff through text messages and at least one call from a blocked a number. More alarming to the plaintiff, the defendant showed up at the her home uninvited, banged on her door, screamed her name and refused to leave. After hearing the plaintiff's testimony, it was reasonable for Judge Hoffman to conclude that the plaintiff was in fear of her physical well being and that she was in danger of future acts of domestic violence. As result, his decision to grant the plaintiff's request for a temporary restraining order is appropriate under this factor.

Moreover, on March 1, 2013 the defendant filed an immediate appeal of the temporary restraining order to preserve his rights which he felt were violated by the ex-parte hearing. The Honorable Peter Warshaw denied this immediate appeal on April 3, 2013. As a result, the defendant's rights were preserved and protected even though his immediate appeal was denied.

Defendant contends that Judge Hoffman should have recused himself from hearing the temporary restraining order because he was "incapable of providing an unbiased, fair, and "reasonable" decision on the matter." Without citing the statutory basis, the Court believes the defendant relies upon N.J. Court Rules, R. 1:12-1 (g), which in pertinent part states a judge shall recuse himself from hearing a matter where "there is any other reason which might preclude a fair and unbiased hearing and judgment, or

which might reasonably lead counsel or the parties to believe so." However, a judge may still preside over the case of this nature where required by the rule of necessity, [i.e.,] "[I]f by the disqualification of a judge there would be no means of proceeding, he [or she] may take such cognizance of the case as is absolutely necessary." Rivers v. Cox-Rivers, 346 N.J. Super. 418, 421, 421 n.1, 788 A.2d 320 (App. Div. 2001) (quoting Pyatt v. Mayor & Council of Dunellen, 9 N.J. 548, 557, 89 A.2d 1 (1952)) (first alteration in original).

Here, there is no evidence before the Court that at the time Judge Hoffman granted the Temporary Restraining Order he knew either of the parties. The police officer called Judge Hoffman to hear the temporary restraining order because he was the municipal court judge in the local where the alleged domestic incident occurred. Prior to hearing any testimony regarding the Temporary Restraining Order, Judge Hoffman asked the police officer the names of the parties involved. After hearing the names of the parties, Judge Hoffman responded that "they don't sound familiar, um, I guess put her on."

Since Judge Hoffman did not recognize either of the names of the parties involved in the domestic incident, he conducted the ex-parte temporary restraining order hearing. Even if Judge Hoffman accidentally erred by hearing the matter, the defendant filed an immediate appeal to protect his rights. The denial of this appeal affirms that there was a sufficient basis for the temporary restraining order and does not mean his rights were violated.

The defendant also argues that the Court failed to investigate the allegations contained in the complaint for a temporary restraining order and even believing that the allegations in the complaint were true, they do not warrant the issuance of a temporary

restraining order. The defendant incorrectly cites Silver v. Silver, 387 N.J. Super. 112 as the standard to determine whether a temporary restraining order should be granted.

Instead, in order to grant a temporary restraining order, a judge must determine three factors. First, the plaintiff must qualify be a "victim" as classified by N.J. Stat. Ann. § 2C:25-17 et seq. Second, the trier of fact must determine that a defendant committed an act of "Domestic Violence" under the Act. N.J.S.A. 2C:25-28a. Finally, the judge must determine that a temporary restraining order is "necessary to protect the life, health or well-being of a victim." N.J.S.A. 2C:25-28f, or that the applicant is "in danger of domestic violence." N.J.S.A. 2C:25-28g, or that there is "good cause" shown. N.J.S.A. 2C:25-28i. Moreover, it is not the duty of the Court to investigate or disprove any allegation brought before it.

Here, the plaintiff satisfied all of the necessary requirements for a temporary restraining order listed above. The plaintiff and defendant engaged in a dating relationship and the plaintiff is therefore capable of being a victim pursuant to the statutes listed above. Moreover, the Court finds that the plaintiff gave testimony sufficient for a judge to determine the defendant's conduct was violative of at least one of the predicate offenses contained in the Prevention of Domestic Violence Act. Further the plaintiff expressed that she was scared by the defendant's conduct the prior Wednesday and that she had asked the defendant via text message not to contact her anymore. Nonetheless, the defendant continued to contact the plaintiff via text message and by calling the plaintiff on the phone from a private number to avoid identification at least once.

The plaintiff also stated that the defendant had sent her a text message that said his ex-wife has a Temporary Restraining Order against him and "shoot first, I got nothing

to lose.” She further stated she “felt threatened because of my two little girls, and like I know that he doesn’t even have visitation with his own and he’s obviously like relentless, I’ve tried everything to get him to stop and he’s just not.”

This conduct is such that a reasonable person could determine that the defendant’s conduct is detrimental to the life, health, or well-being of the victim. As such, the defendant’s actions created a situation which was appropriate for the plaintiff to require the protection afforded by the issuance of the temporary restraining order.

As a result, the Court denies the defendant’s motion to dismiss.