

I am requesting change of primary residence and sole custody for my three children: Glen Bryan Avery (13), Jessica Rae Avery (9) and Montie Stuart Avery (6).

The reason this action is necessary can be defined under four categories:

1. Patricia Rae Avery has demonstrated on numerous occasions her unwillingness to respect and work with the guardian ad litem appointed on the children's behalf.
2. Before and during the appointment of the guardian as litem, Patricia Rae Avery has demonstrated on numerous occasions her unwillingness to assume responsibility for her children under joint custody.
3. The children, and Patrice Rae Avery, have reported to various counselors, doctors, and others specific incidents of child abuse. Additionally, Patricia Rae Avery has demonstrated time and time again her inability to tell the truth on almost any issue.
4. Patricia informed the Court Mediator of her desire to divide the children between herself and their father with the intention of never seeing one of her children again.

Guardian ad Litem

At the request of the children's father, the court appointed a guardian ad litem. The children's father felt this action was necessary due to Patricia Rae Avery's history of abuse and her unwillingness to obey the joint custody order.

Patricia Rae Avery's relationship with the guardian has proven to be ineffective and dangerous to the children. She is unwilling to cooperate with the guardian on many if not all issues.

- She controls communication with the guardian by restricting communication to email. This has, on numerous occasions, allowed her to deny receiving email from the guardian.
- She has controlled the children's access to the guardian by physically restricting their ability to contact their guardian.
- She has failed to communicate critical information to the guardian, such as the status of advanced placement for the youngest child.
- She has defied the guardian, refusing to follow his instructions and refusing to communicate with him on the telephone in order to receive instructions

Two recent examples illustrate these problems. The first incident climaxed on August 8, 2002 and resulted in Patricia Rae Avery not only canceling her youngest son's sixth birthday party but forcing the child to call his friends personally and notify them of the cancellation.

Montie's 6th Birthday As early as July 16, 2002 the children's father requested to spend lunch with the children on the day of Montie's sixth birthday, August 8 2002.

The guardian made numerous attempts to address this issue. Spaced between long periods of failure to respond, Patrice Rae Avery initially stated that the children would be unavailable on Montie's birthday due to extensive plans. The guardian then requested a schedule of these plans. Patricia Rae Avery never provided the schedule. Eventually, the guardian instructed Patricia Rae Avery to allow the children's grandmother to pick up the children between 11:45 am and 12:00 pm for the birthday lunch and that the children would be returned by 1:30 pm.

Patrice Rae Avery took serious and abuse steps to attempt to thwart this plan and eventually punished all of the children for attending lunch with their father and grandparents.

- She forced the two youngest children to telephone the guardian's office and claim that they were afraid to go to their father. Patricia Rae Avery has a long history of forcing the children to engage in such activities. A company employee reports overhearing the daughter Jessica telling her younger brother that 'she only lies when her mother makes her'.
- When the abuse of the children failed, Patricia Rae Avery then telephoned the guardian and attempted to convince him that the children were unwilling to go. She finally released the children to attend the lunch.
- She then demanded that the oldest child, then staying with his father, attend Montie's birthday party hosted by Patricia Rae Avery. Despite the father's concerns about the relationship with Patricia Rae Avery and Glen (at that time the guardian had put Glen on a 'break' from his mother. Subsequently, on September 4, 2002, the guardian suspend visitation between Glen and Patricia Rae Avery), the father considered the request reasonable. The father agreed to the request as long as it did not interfere with a commitment previously promised Glen. The second party did and the father freed Glen from the necessity of seeing his mother.
- Patricia Rae Avery responded with a serious of actions 1). She and the two younger children made numerous telephone calls to both Glen and his father demanding Glen see her and threatening to cancel Montie's birthday party if Glen and his father did not comply. The father has a recorded voice mail message where Jessica describes Montie balled up on the floor and crying because his birthday was being ruined. These call continued on until after 9:00 pm that evening
- 2) Patricia Rae Avery forced Montie and Jessica to call their friends and cancel Montie's birthday party.

Transfer of the children on August 23, 2002 The children's father was more than happy to pick up and deliver the children to the family residence and did so for the first several months of separation. When Patricia Rae Avery gained a temporary restraining

order after the children intervened in a violation of joint custody. The guardian then instructed Patricia Rae Avery to pick up and deliver the children. Patricia Rae Avery had resisted picking up and dropping off the children at their father's office. On the visitation period ending July 10th she had informed the guardian that she refused to pick-up the children at the office. On that morning she delayed several hours picking up the children and once requested that the father order an employee to take the children home.

On August 23, 2002 she refused to take the children to the new office location. She refused to take calls from the guardian, refused to answer emails, and forced the children to telephone their father and demand that he pick them up at the old office and violate the restraining order. Patricia Rae Avery eventually dropped the children off at a public place, Hastings, and the father picked them up.

Again, Patricia Rae Avery refused to listen and even communicate with the guardian. The children's father overheard her yelling at the children that she would only take them to the new office if the judge gave her a written order to do so.

Other Incidents These are two of the incidents that we are aware of. We are confident that the Guardian has numerous other examples of Patricia Rae Avery refusal to respect or adhere to the court appointed guardian's responsibilities.

Disregard of Joint Custody

Joint custody works from the presumption that both parents will be involved in critical areas of the children's life. There are four broad areas covered – school, health, activities,

From day one of the separation, Patricia Rae Avery acted and continues to act as if she has full custody of the children and disregards my responsibilities in this area. She has refused to consult or even inform me of areas specifically covered by joint custody.

The examples are so numerous that it would not be worthwhile to document. The best example is her attempt to have Glen labeled violent by turning him into CYFD, sending him to physicians other than his primary care physician, and then seeking a restraining order against me when I intervened.

I think the results speak for themselves, CYFD found no basis for the charges Patricia Rae Avery made against her son, the other physician is attempting to block access to the records supporting the attempt to medicate Glen, Glen finished the semester with a 3.0 GPA (his lowest ever, but still above average), and the guardian can draw his own conclusions about the validity of the initial restraining order.

Patricia has failed to work under the guardian system, it is then not surprising that she would have a complete disregard for the concept of joint custody. Until she can demonstrate the ability to work under joint custody, it can not be considered as a viable option. To maintain the myth of joint custody would be unjust to both the children, who will be torn apart, and the father, who endeavors to make rational decision on critical child care issues.

Physical and Mental Abuse

Patricia Rae Avery has an extensive history of abusive behavior to family members. Major incidents averaged between two and three a year for the last fifteen years. Such is the nature of Patricia Rae Avery's mental illness that she has admitted many of the incidents to physicians, counselors, and family members. Additionally, Patricia Rae Avery's own health care providers have attested to a diagnosis of Mucnhowseien (sp) by proxy.

We are not qualified to diagnosis or even discuss the extensive nature of Patricia Rae Avery's mental illness. That is best left within the mental health profession. We can only address the consequences of her illness and the impact of the children.

Physical Abuse Patricia Rae Avery's physical abuse is typically seen as a periodic loss of temper resulting in physical violence on the nearest person. The only mitigating factor seemed to have been the age of the victim. The children's father, on a daily basis, saw evidence of Patricia Rae Avery's attachment to her children diminishing as the children aged and grew in size. The larger the child, the less likely Patricia Rae Avery was to physically assault the child. Unfortunately, subsequent to the separation, Mr. Avery learned from the children that the rule was general and not absolute. All three children report numerous examples of physical abuse by their mother.

Last fall, Patricia Rae Avery called her husband in a rage because the youngest child, Montie, just five years old, had refused to tell her that he loved her. Montie's father reminded Patricia Rae Avery that this was typical behavior of a five year old and she should ignore it and of course Montie loved her. The children's father was mistaken in his belief that Patricia Rae Avery had calmed down. She called back shortly to state that she had thrown Montie into a cold shower naked until he had told her that he loved her.

Such was the nature of Patricia Rae Avery's illness that she not only reported the abuse to the children's father, but also the children's grandfather. She took the unusual action of calling the grandfather at work and bragging about the abuse.

Shortly thereafter, in November, Patricia Rae Avery physically assaulted Glen, then twelve years old. The children's father intervened physically and insisted that Patricia Rae Avery seek counseling. On previous interventions, Patricia Rae Avery claimed to have attended 'free' counseling and her behavior improved. After these two incidents the children's father insisted on seeing a bill to show that she was seeking help.

It was at this point that Patricia Rae Avery did in fact seek help both with a counselor and by beginning an affair with the gentleman she introduced to the children before she had filed for divorce or demanded that the children's father leave the family residence.

Other examples of physical abuse include lifting her seven year old daughter over her head and dropping her on the wood floors, physically assaulting the children's father and tearing his eyeglasses off while the family was driving down a freeway in California, forcing the children to do push-ups as a disciplinary action on numerous occasions each day, and other incidents the children are now just beginning to talk about.

Mental Abuse The example of Montie's sixth birthday perfectly illustrates Patricia Rae Avery's mental abuse of the children. Other significant examples include suicide gestures, her pattern of constant lying, her inability to keep commitments to the children, her inability to maintain consistent behavior with the children, and her stealing.

Every two or three years, Patricia Rae Avery would threaten suicide. Her mother did this and she had one brother commit suicide. These incidents took the form of involving her current best friend in the 'crisis', having the best friend contact Stephen A. Avery and warn of the suicide threat, await Mr. Avery's intervention, and then pretend the incident had never occurred. The children were witness to several of these incidents, the latest in January of this year.

Patricia Rae Avery seems incapable of telling the truth. This pattern is not restricted to areas she considers important but extends to almost all areas of conversation. For example, if a child receives a score of ninety-five on a test she will report a score of ninety-seven. This results in her children's cynical response to their mother's conversation from ages as young as four.

Patricia Rae Avery's inability to tell the truth is clearly demonstrated by her response to discovery. Her untruths painted a specific image of herself that she wished conveyed to the court and probably influenced the granting of the restraining order. Examples include her failure to mention her college degree (she graduated from UNM Phi Beta Kara), her failure to record her work history (her last position was as a licensed teacher at Mountain View Middle School), and she failed to note her arrest for shop lifting a couple of years ago.

The guardian is knowledgeable about the truthfulness or lack thereof, he has experienced in dealing with Patricia Rae Avery each and every day.

Patricia Rae Avery's problems include a problem with theft. She was arrested for shoplifting three years ago and was not prosecuted because of the type of intervention on my part noted by the guardian in reference to health care providers who attempt to medicate my children instead of treating them.

But the moral issue on theft is a more prevalent one. Every time I take the children to a grocery store, I am forced to explain to Jessica and Montie that I do not agree with their mother's habit of giving them donuts to eat while they are shopping. Patricia Rae Avery tells the children (and me) that it is okay with the store to do this.

Other forms of mental abuse Patricia Rae Avery inflicts on the children is constant yelling, using them as hostages to gain the response she wishes from adults, and pressuring them to 'forgive' her. This latter form of Patricia Rae Avery's mental illness is a little complicated. Patricia Rae Avery believes any action of hers can be put into the past and 'forgiven'. This does not mean actual forgiveness, Patricia Rae Avery has shown again and again that she does not care about actual forgiveness, just the words. Again, the simple *words* are what she requires to justify her actions, not actual forgiveness.

Division of the Family

In March of this year, Patricia Rae Avery made the following proposal at the court mediation session. Specifically, she offered to surrender all custody and visitation of Glen Avery in return for the children's father surrendering custody and visitation of Jessica and Montie. To quote Patricia Rae Avery, 'He would take Glen and I would take Jessica and Montie and I would never have to see him again'.

Needless to say, I rejected the offer, but this comment provides insight into all of Patricia Rae Avery's actions during the last six months.

1. Made the offer to divide the children in March
2. In May, she attempted to have Glen diagnosis as violent and unsafe around his siblings as a result of an incident where Jessica began the physical aspect of the minor confrontation.
3. In August she surrendered primary residency of Glen to his father.
4. In September the guardian was forced by her actions to suspend all visitations with Glen.
5. In September, she reported to the guardian that the new counselor had suggested that Glen's behavior warranted placement in a foster home.
6. After suspension of visitation, she presumed extended visitation with Jessica and Montie without consent of the guardian or the children's father.
7. Throughout the last six months she has acted in a manner to separate Glen from Jessica and Montie through conversations, action, and even blaming the cancellation of Montie's birthday party on Glen.

To the best of my knowledge, Patricia Rae Avery has not protested the suspension of visitation, in fact, I would argue that she is well on her way to fulfilling her dream of a divided family first state during court mediation.

On a related note, during the night of August 31, 2002 Jessica awoke with what she considered her worst nightmare ever. She dreamed that Montie had been taken away for ever.

The guardian and eventually, the court must decide if the division of the children is appropriate. To date, no evidence exists to support Patricia Rae Avery's fantasy of Glen as a violent child, while extensive evidence of Patricia Rae Avery's own problems are surfacing.

Summary

Basically, Patricia Rae Avery has with some success created a situation where joint custody is impossible and where the children are divided in the manner she desired. I am asking the guardian to reject this situation and move the children toward a healthier environment. Patricia Rae Avery's refusal to work with the guardian, her refusal to work within joint custody, her history of physical abuse, her history of mental abuse, her

history of untruths, and her stated desire to divide the children all point to her current unfitness to parent.

I am well aware, as the children's father that I am not without blame. I will spend years second guessing my actions. My failure to protect my children, my failure to my children will haunt me forever. I look at many of my actions as rationalizations in order to maintain comfort for myself.

But I wish to learn from my mistakes. I believe the best place for the children at this moment is in the custody of their father with visitation to their mother only for all three children and after Patricia Rae Avery and Glen have begun joint counseling.

I am unaware of any allegations, including fantasies of Patricia Rae Avery that point to any serious flaws in my parenting. With this being the case, I again state that full custody and restricted visitation with Patricia Rae Avery is in the children's best interest.