
**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

No. 05-1268

JENNIFER BIER,

Plaintiff-Appellant,

vs.

EDWARD ZAHREN, in his official capacity as United States Marshal for the District of Colorado, LIEUTENANT GENERAL STEVEN R. POLK, in his capacity as Inspector General of the Air Force, and COLONEL DAVID BRASH, USAF Trial Judiciary,

Defendants-Appellees.

Appeal From The United States District Court
For The District Of Colorado, Case No. 05-N-1020,

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
OF
NATIONAL ASSOCIATION OF SOCIAL WORKERS,
COLORADO PSYCHOLOGICAL ASSOCIATION,
COLORADO PSYCHIATRIC SOCIETY,
COLORADO SOCIETY FOR CLINICAL SOCIAL WORK,
COLORADO ORGANIZATION FOR VICTIM ASSISTANCE, AND
COLORADO COALITION AGAINST SEXUAL ASSAULT**

**IN SUPPORT OF PLAINTIFF-APPELLANT'S
EMERGENCY MOTION FOR STAY PENDING APPEAL**

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Introduction

Amici seek leave to file the attached amicus brief to provide assistance to the Court and to make the Court aware of the fundamental importance of granting an emergency stay pending appeal of the Warrant of Attachment that would otherwise result in the arrest of a licensed social worker, and/or seizure of her confidential records, for providing confidential therapy to the alleged victim of sexual assault. The *Amici* in this motion are the National Association of Social Workers and its Colorado Chapter, the Colorado Psychological Association, the Colorado Psychiatric Society, the Colorado Society for Clinical Social Work, the Colorado Organization for Victim Assistance, and the Colorado Coalition Against Sexual Assault. *Amici* collectively represent, among others, over 3,000 providers of mental health and therapeutic treatment in the state of Colorado and provide critical assistance to the victims of violent crimes, including sexual assault, across Colorado.

Amici broadly and uniquely represent these constituencies and can provide valuable assistance to the Court regarding the effect on psychotherapy and crime victims of not granting a stay of arrest pending appeal (more detailed description of each *Amici*'s interest and organization is set forth in Section II below). The Defendants have refused to consent to the filing of the amicus brief. Plaintiff has not objected to its filing.

I. An Amicus Brief Is Desirable And The Matters Raised In *Amici*'s Brief Are Relevant To The Disposition Of The Motion.

The questions involved in this request for an emergency stay are of fundamental importance to all therapists and victims of crime seeking therapy. Whether a military court can hale before it a civilian social worker and the notes she compiled during therapy sessions with a rape victim bears directly on the psychotherapist-patient relationship and the provision of mental health care services throughout Colorado and the nation. Before allowing this drastic and, as far

as *Amici* are aware, unprecedented action to occur, this Court should have a full and complete opportunity to consider the issues and hear argument from the parties.

The District Court's ruling transcends the military context in which it arose. If a stay is denied, and a civilian social worker jailed for failure to disclose her confidential therapy notes, or forced to disclose them under threat of impending imprisonment, this could jeopardize the trust necessary for effective mental health treatment provided by many of the members of the *Amici*. Moreover, the loss of confidentiality and the *de facto* evisceration of the psychotherapist-patient privilege that would result from the denial of a stay will visit irreparable harm on *Amici*'s constituents and patients. Sexual assault, domestic violence, and child abuse victims, among others, will think twice before seeking the care that they need and in which our society places substantial value when they learn that their most private and painful thoughts might be subject to disclosure.

II. The Interests Of *Amici Curiae*.

As noted, the *Amici* in this motion are the National Association of Social Workers and its Colorado Chapter, the Colorado Psychological Association, the Colorado Psychiatric Society, the Colorado Society for Clinical Social Work, the Colorado Organization for Victim Assistance, and the Colorado Coalition Against Sexual Assault. Each organization has an important perspective that can assist the Court in its consideration of the issues presented. A description of each organization and its particular interests in this action follows:

National Association of Social Workers and its Colorado Chapter. With 153,000 members, the National Association of Social Workers ("NASW") is the largest organization of professional social workers in the world. The Colorado Chapter of NASW represents 2,200 members. The purposes of NASW include improving the quality and effectiveness of social

work practice in the United States and developing and disseminating high standards of social work practice, concomitant with the strengthening and unification of the social work profession as a whole. In furtherance of these purposes, NASW promulgates professional standards and Criteria. Additionally, NASW conducts research, prepares studies of interest to the profession, sponsors the NASW press, provides opportunities for continuing education, and enforces the *NASW Code of Ethics*, which NASW members are required to honor.

NASW's members are highly trained and experienced professionals who counsel individuals, families, and communities in a variety of settings, including schools, hospitals, mental health clinics, senior centers, and private practices. The *NASW Code of Ethics* requires consent for disclosure of client information with limited exceptions for legal requirements or protection from harm. NASW's policy statement, *Confidentiality and Information Utilization*, indicates that social workers should be guided by the principle that "[c]lients' informed and authorized consent will be a prerequisite to transmitting information to or requesting it from third parties." NASW, *SOCIAL WORK SPEAKS* 55, 59 (2003). Accordingly, given NASW's policies and the work of its members, NASW has expertise that will assist the Court in reaching a proper resolution of the questions presented in this case.

Colorado Psychological Association. The Colorado Psychological Association ("CPA") is a professional association of psychologists and the voice for Psychology in Colorado. CPA has approximately 500 members who are representative of all specialty areas in the field of psychology and work in both the private and public sectors. The mission of the CPA is to advance psychology as a science and a profession, as a means of promoting human welfare in the State of Colorado. The members of the CPA have an interest in the emergency motion because the right of privacy in the therapist-patient relationship is the cornerstone of the therapeutic

relationship that allows a client to confide and work through their personal traumas, losses, injuries and concerns in a safe and supportive environment. Legal action that threatens this basic right jeopardizes the very foundation of the therapeutic relationship.

Colorado Psychiatric Society. The Colorado Psychiatric Society (“CPS”) is a district branch of the American Psychiatric Association and has membership of approximately 520 psychiatrists who practice throughout the State of Colorado. All CPS members are physicians who have completed medical school and a psychiatric residency program. Some have received additional training in areas such as child psychiatry, geriatrics, forensics, and addictions. CPS has an interest in the outcome of the emergency motion because its members have a strong interest in the protection of physician-patient confidentiality.

Colorado Society for Clinical Social Work. The Colorado Society for Clinical Social Work (the “Society”) is a professional association of clinical social workers that provides opportunities for education, sets practice standards, promotes public recognition of the profession, and advocates for protection of clinical social workers and their clientele. The Society has approximately 80 members and has an interest in the outcome of the emergency motion because it is committed to the protection of the therapeutic relationship between clinical social workers and their patients.

Colorado Organization for Victim Assistance. The Colorado Organization for Victim Assistance (“COVA”) is a non-profit statewide membership organization with over 800 members dedicated to developing an influential voice on behalf of crime victims. COVA supports crime victims by assisting the individuals, agencies and communities who work with crime victims and the criminal justice system through education, training and technical assistance. COVA has an interest in the outcome of the emergency motion because the denial of

the requested stay would require a licensed social worker to choose between revealing the counseling and therapy records of a sexual assault victim or facing a contempt charge and potential incarceration by the military.

Colorado Coalition Against Sexual Assault. The Colorado Coalition Against Sexual Assault ("CCASA") is a membership organization consisting of approximately 80 member agencies, including *inter alia*, rape crisis centers, victim advocacy programs, health care and treatment providers, law enforcement, as well as concerned individuals. CCASA members provide a collective voice for sexual assault victims and their supporters. CCASA has an interest in the outcome of the emergency motion because the disclosure of a sexual assault victim's confidential communications with her therapist will cause irreparable harm to those in therapy, and will chill many others from seeking it.

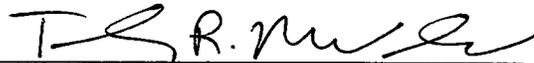
Conclusion

For the foregoing reasons and pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, *Amici Curiae* respectfully move the Court for leave to file the attached Amicus Brief In Support Of Plaintiff-Appellant's Emergency Motion For Stay Pending Appeal.

DATED this 15th day of June, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this 15th day of June, 2005 served a true and correct copy of the foregoing Motion for Leave to File Amicus Brief, by facsimile and first class U.S. Mail, postage prepaid, on the following:

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