

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO 7325 S. Potomac Street Centennial, Colorado 80112 Phone: 303-649-6355	<b>▲ COURT USE ONLY ▲</b>
STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL,  Plaintiff,  v.  COLORADO HUMANE SOCIETY & S.P.C.A., INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHANIE L. GARDNER, an individual;  Defendants.	
Attorney for Defendant Mary C. Warren: Fredric M. Winocur, No. 22112 R. Livingston Keithley, No. 35786 KAMLET SHEPHERD & REICHERT, LLP Address:      1515 Arapahoe Street Tower I, Suite 1600 Denver, CO 80202 Phone No.:   303-825-4200 Fax No.:      303-825-1185 E-mail:       fwinocur@ksrlaw.com	Case No. 2008 CV 2659  Division: 404
<b>DEFENDANT MARY C. WARREN’S OBJECTION TO CUSTODIAN’S COMBINED          FOURTH AND FIFTH REPORTS, AND RESPONSE IN OPPOSITION TO          CUSTODIAN’S MOTION TO APPROVE REPORT</b>	

COMES NOW, Defendant Mary C. Warren (“Mrs. Warren”), by and through her undersigned counsel Kamlet Shepherd & Reichert, LLP, and hereby files her Objection to the Combined Fourth and Fifth Report (the “Report”) submitted by the Custodian to the Court on April 27, 2009, and opposing the Custodian’s Motion to approve that Report (“Motion”), and states as follows:

1. Mrs. Warren opposes the Custodian’s Report because the Report shows the Custodian is acting outside the scope of his authority granted by this Court.
2. In paragraph 16 of the Report, the Custodian discusses the preparation of forms and a procedure for receiving Requests for Proposal to Provide Permanent Management for the

Colorado Humane Society. However, the Custodian was never granted authority by this Court to prepare such a process to install a *permanent* board, or delegate his interim management responsibilities pending trial.

3. Pursuant to the Court's Order of December 16, 2008 appointing a custodian for CHS, which was stipulated to by the parties (the "Order"), the Custodian was appointed "*pendente lite*," that is, for the pendency of this litigation. *See* Black's Law Dictionary, 5th ed. (1979) at 1020 ("Pendente lite: pending the suit; during the actual progress of a suit; during litigation."). The Custodian's appointment is to "continue in effect until terminated or modified by further Order of this Court." *See* Order at ¶ 2.
4. The Order does not grant the Custodian authority to find and install permanent management for CHS. Rather, the Custodian's limited management authority exists only pending trial. This Court should not approve Custodian's efforts (or request for payment therefor) concerning his "Request for Proposal" process.
5. In paragraph 15, the Custodian identifies certain individuals whom the Custodian has asked to serve as advisors. The Custodian is free to seek advice from whomever he may choose. But Mrs. Warren objects to the assertion that these individuals are somehow protected and granted judicial immunity pursuant to paragraph 14 of the Order. The Order does not require the Custodian to create a Board of Advisors, to be bound by a Board of Advisors, or to otherwise seek such expertise.
6. Moreover, significant legal issues are created to the extent the Custodian has appointed employees, vendors, or other persons with relationships to CHS to this 'Board' and then purports to grant them judicial immunity. This Court should not approve the Custodian's purported extension of judicial immunity to Custodian's Board of Advisors.
7. Mrs. Warren objects to the assertion by the Custodian that he can evade this Court's oversight authority by including a section entitled "Informational Report." *See* Report at ¶ 19 (purpose of Informational Report is to "allow custodian to Report litigation matters with conclusions of law and editorial content . . . without submitting the Informational Report to the Court for approval"). Pursuant to paragraph 4 of the Order, the Custodian manages CHS "subject to the supervision and exclusive control of this Court."
8. Mrs. Warren objects to any assertion by the Custodian that he has the authority to make any "findings of fact" on behalf of this Court, or that he is empowered to make any "conclusions of law," or that his regular reports to the Court have the effect of being Orders of this Court. *See* Report at ¶ 19.
9. The Custodian was appointed and tasked simply with making regular monthly reports to the Court concerning his progress. *See* Order at ¶ 6(d). The Custodian cites no provision of the Order or other law which empowers him to make any conclusions of law, or receive and review any evidence or otherwise make any findings of fact. Likewise, there is no statute or case law that gives the monthly progress reports the effect of an Order of the Court.

WHEREFORE, Mrs. Warren respectfully requests this Court reject those portions of the Custodian's Combined Fourth and Fifth Report to which she has objected above.

Respectfully submitted this 18<sup>th</sup> day of May, 2009.

KAMLET SHEPHERD & REICHERT, LLP

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 18<sup>th</sup> day of May, 2009, service of the foregoing **DEFENDANT MARY C. WARREN'S OBJECTION TO CUSTODIAN'S COMBINED FOURTH AND FIFTH REPORTS, AND RESPONSE IN OPPOSITION TO CUSTODIAN'S MOTION TO APPROVE REPORT** was effected via LexisNexis, properly addressed to:

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In accord with C.R.C.P. 121 § 1-26(7) & (8) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

*/s/ Diana Brechtel*