Sensationalist Baloney

To the Editor:

The *Michigan Bar Journal* joined the ranks of tabloid journalism with its publication of "Debtor's Prison in Michigan: The ACLU Takes Up the Cause" in the July 2010 issue. I take specific offense to the first three paragraphs of the article. The disparagement of a long-time, well-respected sitting judge, coupled with numerous factual inaccuracies reminds one of the practices of the rags found at the grocery store checkout.

Those here in the Delta County Bar who practice in front of Judge Robert Goebel know that he is dedicated, available, fastidious about detail, and knows more about the law than most of us. He is fair, but firm. His door is open, and time in his court is available with relatively short notice. He does not believe in ethical, legal, or constitutional shortcuts.

The facts are that Edwina Nowlin, well known to those of us in the legal community, wouldn't—not couldn't—support her children. Time and time again, she had the resources to pay for her children's care but instead chose to squander them. Despite being ordered to bring funds into the court to pay minimal amounts toward her child's care at Bay Pines Detention Center, she spent thousands on frivolous items including trips to the casino.

A night at Bay Pines Detention Center, where Nowlin's child was housed, costs more than a night at the Grand Hotel on Mackinac Island; Judge Goebel was simply attempting to get Nowlin to pay a share of it.

It is standard practice for Judge Goebel to offer court-appointed attorneys for those who require them according to the constitution. If an attorney is requested, the proceeding is stopped until counsel is obtained. The record in this case is clear: counsel was offered, but Nowlin refused. The court-appointed attorneys in Judge Goebel's court are seasoned professionals who diligently perform their assignments.

To suggest that the sheriff took Nowlin's total check is also untrue. In another instance, the court had told Nowlin to bring her income tax return to the court. Instead, she cashed it, and the thousands of dollars simply disappeared. Nowlin's defense was that her ACLU attorney told her to cash it rather than follow the court's order. Eventually, the court was notified that the ACLU was no longer going to represent Nowlin as they, too, apparently had enough of her antics.

As long as one can remember, those who do not support their children can be jailed. Last time I checked, there was a statute on the books making it a felony not to support your children.

I appreciate the efforts of the ACLU, but before the *Michigan Bar Journal* staff publish sensationalist baloney disparaging specific courts and judges, they ought to check out the facts.

Daniel J. Vader
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Response from the Author

Mr. Vader obviously doesn't know the specifics of the Nowlin case. His opinions seem to be based on gossip about Ms. Nowlin, his view of the judge's general practices regarding appointment of attorneys, and aspects of Ms. Nowlin's experience with which the ACLU was not involved.

The ACLU agreed to represent Ms. Nowlin after learning that she had been placed in jail for 30 days for not paying the $104 a month she had been ordered to pay for her son's confinement in a juvenile detention center. During that time, the facts are uncontroverted that she was $17,000 in debt, homeless, and unemployed. When she had work, her wages were being garnished. We moved to have her released based on indigency, and that motion was appropriately granted by Judge Goebel.

At that point, the ACLU's representation of Ms. Nowlin ended—not because of what Mr. Vader referred to as her "antics," but rather because our involvement was limited to dealing with the constitutional issues of the right to an attorney and the abhorrent practice of jailing a woman because of her inability to pay for her son's confinement expenses. We cannot speak to further interactions between her and the courts.

Mr. Vader defends what has happened to Ms. Nowlin as justifiable because of the legal obligation to pay child support; however, he misses the two most important points in the ACLU's case. First, the court denied her the right to an attorney for what is a quasi-criminal matter for which she was jailed. Before a court can impose a criminal sanction (i.e., 30 days determined sentence), the court must provide legal counsel. This court errantly held that since it was civil contempt, she was not entitled to an attorney. Second, she should not have been jailed for failure to pay for the cost of her son's confinement if she was too poor to afford it—whether or not she had an attorney.

Further, Mr. Vader alleges that the ACLU's cooperating attorney at trial, Karl Numinen, told Ms. Nowlin to disobey the court order with respect to her tax refund. According to Mr. Numinen, that is simply not true.

Moreover, I made no personal attack on Judge Goebel, and it is troubling to see the serious issues raised in this article reduced using such hyperbole. Courts sometimes make mistakes; this is why there is an appellate system and why it matters that organizations like the ACLU exist—to act as a watchdog to preserve and defend constitutional rights.

Finally, Mr. Vader skims over the reality that this court has not been alone in jailing destitute individuals for failure to pay court-ordered costs, a practice that is unconstitutional. As the Michigan Supreme Court said in 1889, the government has no "power to impose the duty of performing an act upon any person which is impossible for him to perform, and then make his nonperformance of such duty a crime, for which he may be punished by fine and imprisonment." Such laws are "obnoxious to our constitution" and "a disgrace." *City of Port Huron v Jenkinson,* 77 Mich 414, 419–420; 43 NW 923 (1889).

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