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DISTRICT COURT OF APPEAL
FIRST DISTRICT

VERONICA HARRIS

Appellant

v.

DEPARTMENT OF CHILDREN
AND FAMILY SERVICES

Appellee

_____ /

Case No.: 1D01-2862

L.T. No.: 00-2824

closed

EJD

OCT 24 2 43 PM '01
FILED
ADMINISTRATIVE
HEARINGS

APPENDIX TO
INITIAL BRIEF OF APPELLANT
VERONICA HARRIS

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Florida Bar No. 254126
320 Johnston Street
Tallahassee, FL 32303
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Attorney for Appellant

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3. Corrected Recommended Order, November 17, 2000 1.11
4. Notice of Department's Intent to Dismiss Petitioner's Request
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TAB 1

THE RECORD

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Attachment A

DEPARTMENT OF CHILDREN AND FAMILIES

DISTRICT 2

REQUEST FOR CHAPTER 120 HEARING

TO: Department of Children and Families
District Legal Office
2639 N. Monroe Street
Room 100-A
Tallahassee, Florida 32399-2949

I, VERONICA HARRIS would like to request a hearing
Name (Please Print)

under Chapter 120, Florida Statutes.

I received notification of the denial of my exemption request on 6/26/2000.
Date

Veronica Harris 6/26/2000
Signature/Date

1229 E/6th St.
Street Address

Tallahassee, Fla 32304
City/State/Zip

850) 575-9072
Home Telephone

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

VERONICA HARRIS,

Petitioner,

Case No. 00-0117CF

v.

DEPARTMENT OF CHILDREN AND FAMILY
SERVICES, (DISTRICT 2),

Respondent.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, Veronica Harris, (hereinafter "Petitioner"), pursuant to Rule 28-106.201, Florida Administrative Code, files this Petition for Formal Administrative Hearing against the Department of Children and Family Services (hereinafter "the Department"), and in support thereof states as follows:

A. Name and Address of Each Agency Affected and Each Agency's File or Identification Number

The name of the affected agency is the Department of Children and Family Services, whose address is 1317 Winewood Boulevard, Building 2, Room 204X, Tallahassee, Florida 32399-0700. The Department's file number is Case No. 00-0117CF.

B. Name and Address and Telephone Number of Petitioner; Name and Address and Telephone Number of Petitioner's Representative; and an Explanation of How Petitioner's Substantial Interests will be Affected by the Agency Determination

The Petitioner is Veronica Harris, 1229 Elberta Drive, Tallahassee, Florida 32304. Her telephone number is (850)575-9072. Petitioner is represented by Yeline Goin and

Robert Apgar, Law Offices of Robert C. Apgar, 902-A N. Gadsden Street, Tallahassee, Florida 32303. Their telephone number is (850)224-9343.

Petitioner's substantial interests will be affected by the Department's decision to deny her an exemption because it will affect her ability to be licensed as a Family Home Day Care provider. Ms. Harris has been a licensed as a Family Home Day Care provider since 1996 and wishes to continue to be employed in that capacity.

C. Statement of When and How Petitioner Received Notice of the Agency's Decision

The Petitioner received notice of the Department's decision to deny her an exemption on Monday, June 26, 2000. The Department's notice was sent by certified mail to Petitioner's attorney.

D. Statement of All Disputed Issues of Material Fact

Petitioner disputes a number of the "facts" and law which are listed in footnote 1 of the "Notice of Department's Intention to Dismiss Petitioner's Request for Hearing unless Additional Information is Filed by Petitioner Within Twenty-One Days."¹ Petitioner responds to those "facts" as follows:

a. Petitioner admits that on August 28, 1996, she pled no contest to the offense of battery against Mr. Fields and that she was adjudicated guilty of that crime.

b. Petitioner admits that section 741.28(1), F.S. defines "domestic violence" as, inter alia, any battery of one family or household member by another who is or was

¹The Department's alleged reasons for denying the exemption were not provided in the Department's notice of denial dated June 22, 2000.

residing in the same single dwelling unit.

c. The Department's definition of "family or household member" is incomplete. Section 741.28(2), F.S., defines "family or household member" as "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time."

d. Petitioner denies that at the time of the battery, Mr. Fields and Ms. Harris had a child in common. Although Ms. Harris was pregnant with Mr. Fields' child, she was only six-eight weeks pregnant and she later miscarried.

e. Petitioner denies that at the time of the battery, Mr. Fields was living with Petitioner approximately three times a week. Mr. Fields spent the night at Ms. Harris' home approximately three times a week, and during other times, he stayed with his mother and sister. Mr. Fields did not keep his personal belongings at Petitioner's home except for some clothing. Mr. Fields did not contribute to the household expenses. At the time of the battery, Petitioner and Mr. Fields had ended their relationship.

f. Petitioner denies that the battery for which Ms. Harris was adjudicated guilty was an act of domestic violence. Petitioner and Mr. Fields did not have a child in common and they were not "residing together as a family" prior to or at the time of the incident.

g. Petitioner admits the facts in footnote 1, paragraph g regarding her first request for an exemption.

h. Petitioner admits that she did not volunteer the information regarding the battery offense. However, because the offense was not a disqualifying offense, she had no legal obligation to do so. Petitioner denies the statement that "even while the hearing was being held, she was being prosecuted for the battery against Mr. Fields." Petitioner was adjudicated guilty of battery pursuant to section 784.03, Florida Statutes, on August 28, 1996. The final hearing was held on September 10, 1996.

i. Petitioner denies that she has a history of violent behavior over an extended period of time.

E. Concise Statement of the Ultimate Facts Alleged, as well as the Rules and Statutes which Entitle the Petitioner to Relief

1. Petitioner was arrested on July 21, 1996, for an incident that occurred between Petitioner and Mr. Frank Fields.

2. On August 8, 1996, the State of Florida charged Petitioner with battery pursuant to section 784.03, Florida Statutes, and driving with a suspended license pursuant to section 322.34(1), Florida Statutes.

3. Section 784.03, Florida Statutes, describes the offense of battery and provides that it is a misdemeanor of the first degree unless the person who commits the battery has two prior convictions for battery, in which case the third battery conviction is a third degree felony. Petitioner's battery offense was treated as a misdemeanor.

4. On August 28, 1996, Petitioner entered a plea of "no contest" to the offense of battery and driving with a suspended license. Petitioner was adjudicated guilty. The court ordered twelve months of probation with the following conditions: (1) no contact

with Frank Fields; (2) \$155.00 court costs; and (3) \$100.00 fine. The plea agreement also required her to pay monthly supervision fees relating to her probation and a fee for the services of the public defender. Petitioner was not required to attend a batterers' intervention program pursuant to section 741.281, Florida Statutes.

5. At the end of Petitioner's probationary period, Petitioner had complied with all the terms of her probation except that she had not paid all of the fees owed. However, she ultimately paid all of the fees, some of which were converted to community service hours which she also completed. Petitioner's probation was terminated on December 2, 1997.

6. At the time of the incident between Petitioner and Mr. Fields, Petitioner was approximately six-eight weeks pregnant. However, Petitioner later miscarried.

7. Mr. Fields and Petitioner had an intimate relationship which ended immediately prior to the incident in July 1996. Mr. Fields spent the night at Petitioner's home approximately two-three days out of the week. The remaining time he stayed with his sister or mother. Mr. Fields did not keep his personal belongings in Petitioner's home other than some clothes. Mr. Fields did not contribute to the household expenses.

8. Petitioner was not found guilty of a disqualifying offense pursuant to section 435.04(2), Florida Statutes, since the battery offense was not committed on a minor. See, §435.04(2)(h), Fla. Stat.

9. In addition, Petitioner was not found guilty of "an act that constitutes domestic violence as defined in s. 741.30." Neither did she commit such an act.

10. "Domestic violence" is defined as, inter alia, any battery "of one family or household member by another who is or was residing in the same single dwelling unit." §741.28, Fla. Stat.

11. The term "family or household member" is defined as "spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time." § 741.28(2), F.S.

12. Petitioner does not have a child in common with Mr. Fields nor does the fact that she was pregnant at the time constitute "having a child in common."

13. Petitioner and Mr. Fields were not "residing together as a family" prior to or at the time of the incident.

14. Since the battery offense was not a disqualifying offense, Petitioner was not legally obligated to notify the Department of the incident during the pendency of her first exemption hearing. See, § 435.04(4), Fla. Stat. In addition, Petitioner truthfully completed all affidavits of good moral character which she was required to sign when she applied for a family day care home license and which she was required to sign on a yearly basis thereafter.

15. In the event that it is determined that Petitioner did commit a disqualifying offense, Petitioner should be granted an exemption pursuant to section 435.07, Florida Statutes. The alleged disqualifying offense occurred four years ago, Mr. Fields was not injured, and he is no longer a part of her life. The incident occurred as a result of Petitioner being angry with Mr. Fields because she had seen him with a woman whom

Petitioner believed Mr. Fields was having a relationship with during the same time that Mr. Fields was seeing Petitioner.

16. The history of the Petitioner since the incident establishes that she has been rehabilitated and would pose absolutely no danger to the children in her family day care home. Petitioner has been licensed as a Family Day Care Home provider since 1996. During this time, she has continually worked to better herself as a person and as a day care provider.

17. Petitioner is actively involved in her church and attends weekly bible study classes. During the past two years, she has made a true commitment to her church and to the moral standards set by her church. She is an active member of the local family home day care providers association and support group, she is Vice President of her neighborhood association, and she volunteers for the Salvation Army.

18. Petitioner has completed 32 hours of training in the Second Helping: Four-Part Enrichment Course for Experienced Child Care Professionals. The course is designed to be a refresher course for providers and is also one of two steps in becoming a Master Provider. There are only two Master Providers currently in Tallahassee.

19. Through the T.E.A.C.H. program offered by the Florida Children's Forum, Petitioner is currently enrolled in the Child Development Associates (CDA) Credentials.

20. Neither the Second Helping nor the CDA are mandatory courses or credentials for family child care providers. Nevertheless, Petitioner voluntarily chose to participate in these courses and programs because she is always searching for ways to continue to improve her day care home and strives for professionalism.

21. Petitioner has also received numerous grants including a Caring for Kids Mini-Grant of \$500.00 in 1998 and \$275.00 in 2000. The Caring for Kids Mini-Grant program is a state-wide program to assist providers with quality enhancement, purchasing of toys and equipment, training, start-up costs, and accreditation. In 1998, Petitioner used the money to enhance her program and purchase quality toys and equipment. In 2000, she used her mini-grant funds to take and complete the Second Helping course for experienced providers explained above.

22. Petitioner was also hand-picked by Kids Incorporated of the Big Bend to receive an Infant/Toddler Grant for the upcoming fiscal year (2000-2001). She was chosen because of the two components that are needed to be successful: genuine love for children and an abundance and diversity of toys and equipment. Kids Incorporated determined that Petitioner possesses the one that cannot be remedied by training or money, love for the children she cares for. The grant will assist Petitioner with the other part, money for toys and equipment.

23. Petitioner possesses a natural love and caring for the children in her care. This is evident in her interaction with them and also her desire to get them school-ready through the School Readiness Program.

24. Petitioner will pose absolutely no danger to the children in her family day care home. Petitioner loves the children as if they were her own and would never do anything to harm them.

F. Demand for Relief to which Petitioner Deems Itself Entitled

The Petitioner requests a formal administrative hearing and asks that the Department determine that Petitioner did not commit a disqualifying offense, or in the alternative, grant her an exemption.

Respectfully submitted this 29th day of June 2000.



Robert C. Apgar
Florida Bar No. 254126
Yeline Goin
Florida Bar No. 934593
902-A N. Gadsden Street
Tallahassee, Florida 32303
(850)224-9343
Fax (850)224-3083

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on John Perry, Esquire, District 2 Legal Counsel, Department of Children and Family Services, 2639 North Monroe Street, Building A, Suite 252, Tallahassee, Florida 32399-2949, on this 29th day of June 2000.



Attorney

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VERONICA HARRIS,

Petitioner,

vs.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Respondent.

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) Case No. 00-2824
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CORRECTED RECOMMENDED ORDER

This Corrected Recommended Order is entered sua sponte and solely for the sake of clarity.

Upon due notice, a disputed-fact hearing was held in this case on September 15, 2000, in Tallahassee, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Ella Jane P. Davis.

APPEARANCES

For Petitioner: Yelene Goin, Esquire
Law Offices of Robert C. Apgar
320 Johnston Street
Tallahassee, Florida 32303

For Respondent: John R. Perry, Esquire
Department of Children and
Family Services
2639 North Monroe Street
Tallahassee, Florida 32399-2949

STATEMENT OF THE ISSUES

(1) Was Petitioner properly disqualified from working in a position of special trust pursuant to Section 435.04, Florida Statutes, on the basis of a July 21, 1996, incident?

(2) If Petitioner was properly disqualified as a result of the July 21, 1996, incident, has she been sufficiently rehabilitated so as to be eligible for an exemption to work in a position of special trust, pursuant to Section 435.07(3), Florida Statutes?

PRELIMINARY STATEMENT

On March 21, 2000, the Department of Children and Family Services (DCF) notified Petitioner that she was disqualified from working in a position of special trust due to a "domestic battery" which had occurred on July 21, 1996.

Petitioner timely requested an exemption for the 1996 incident and simultaneously filed a Request to Contest Accuracy of the Record, which Request asserted that Petitioner's 1996 battery conviction did not constitute "domestic battery" and that Petitioner should not be disqualified from positions of special trust as a result thereof.

Informal agency procedures were exhausted, and DCF denied the exemption request. Petitioner timely requested a disputed-fact hearing pursuant to Section 120.57(1), Florida Statutes.

The case was referred to the Division of Administrative Hearings on or about July 14, 2000.

At the September 15, 2000, disputed-fact hearing, Petitioner presented the oral testimony of Keisha Harris, Versee Hoffman, Cecily Brantley, and Katherine Schmidt. Petitioner testified on her own behalf and had nine exhibits admitted in evidence.

Respondent presented the oral testimony of Ed Forsberg and Christiane LeClair and had two exhibits admitted in evidence.

Subsequent to the hearing, Respondent's unopposed Motion for Enlargement of Time Within Which to File Proposed Recommended Order was granted, as was Petitioner's unopposed Motion to Supplement the Record. Petitioner's five supplemental exhibits were admitted and have been considered.

No transcript was provided.

The parties' respective timely-filed Proposed Recommended Orders have been considered.

FINDINGS OF FACT

1. Petitioner is a high school graduate. She was schooled and certified in New York as a nurse technician. She is certified as a home health aide in Florida.

2. Petitioner was licensed through Leon County as a family home day care provider in 1995. Since 1996, she has been

operating her family day care home pursuant to an exemption from disqualification by a 1973 disqualifying felony (manslaughter).

3. When she sought to renew her day care license in 2000, Petitioner was required to sign an Affidavit of Good Moral Character. The 2000 Affidavit of Good Moral Character read:

By signing this form, I am swearing that I have not been found guilty or entered a plea of guilty of nolo contendere (no contest), regardless of the adjudication, to any of the following charges under the provisions of the Florida Statutes or under any similar statute of another jurisdiction. I also attest that I do not have a delinquency record that is similar to any of these offenses.

I understand I must acknowledge the existence of criminal records relating to the following list regardless of whether or not those records have been sealed or expunged. I understand that I am also obligated to notify my employer of any possible disqualifying offenses that may occur while employed in a position subject to background screening under Chapter 435, Florida Statutes.

The 2000 Affidavit then listed a number of offenses and the corresponding statute numbers. Among the offenses listed were:

Sections 741.30 domestic violence and injunction for protection.

784.03 battery, if the victim was a minor.

4. The 2000 Affidavit is DCF's attempt to paraphrase Section 435.04, Florida Statutes, listing disqualifying

offenses. It is flawed and could be misleading because domestic violence can occur without an injunction for protection.

5. Petitioner signed the 2000 Affidavit on January 25, 2000, in the portion declaring herself free of any disqualifying statutory violations and also signed the Affidavit in the portion stating, "To the best of my knowledge and belief, my record may contain one or more of the foregoing disqualifying acts or offenses."

6. Petitioner's day care license was renewed, despite Petitioner's contradictory declarations on her 2000 Affidavit. She was notified of her disqualification when the five-year background screening turned-up an offense that had occurred on July 21, 1996.

7. Petitioner testified in the instant case that she did not divulge the July 21, 1996, incident on her 2000 Affidavit because she did not think it constituted domestic violence, but why she signed contradictory statements was not explained.

8. The Year 2000 background screening results which DCF received from the Florida Department of Law Enforcement indicated that Petitioner had been found guilty of "battery," on the basis of the July 21, 1996, incident. The Department's Background Screening Coordinator then obtained additional documentation from the file of the Leon County Court. Based on the information in the court file, the Department's District II

Office concluded that Petitioner was disqualified from child care because of a "domestic battery" offense.

9. Petitioner exhausted informal procedures and timely requested an evidentiary hearing pursuant to Section 120.57(1), Florida Statutes (2000). The instant case followed.

10. The instant case is the second occasion Petitioner has appeared before the Division of Administrative Hearings requesting an exemption from disqualification to work in a position of special trust.

11. The first occasion Petitioner appeared before the Division occurred in September 1996, when she sought an exemption because she had been disqualified due to her 1973 felony manslaughter conviction in New York. (See Findings of Fact 2.) Petitioner had failed to disclose the 1973 felony conviction on her 1995 affidavit when she first applied to be a child care worker.¹ That disqualifying offense showed-up in the initial screening procedures applicable to such applicants.

12. Petitioner was granted an exemption for the 1973 manslaughter conviction in Harris v. Department of Health and Rehabilitative Services, DOAH Case No. 96-2010 (Recommended Order entered September 10, 1996; Final Order entered October 30, 1996), as more fully described below in Findings of Fact 34-36. She has been a licensed day care provider ever since.

13. In 1996, Petitioner and Frank Fields had a romantic involvement bounded by Mr. Fields' keeping most of his belongings at his sister's apartment and merely sleeping over at Petitioner's home which she shared with her eight-year-old daughter, two to three nights per week, on a sporadic basis.² On these occasions, he brought with him, and occasionally left in Petitioner's home, only his underwear and some music CDs.

14. At all times material, Frank Fields was an adult male. Although younger than Petitioner, he was not a minor.

15. On July 21, 1996, Petitioner, who was then 47 years old, was two months' pregnant with Frank Fields' child. She testified that at that time she was very upset and confused because of her pregnancy; because Mr. Fields was not helping with household expenses; and because she had heard that Mr. Fields was moving from his sister's apartment to an apartment of his own.

16. On July 21, 1996, Petitioner was driving her car on Blountstown Highway. She noticed Mr. Fields' van and also noticed that there was a female in the passenger's seat of the van. Apparently, Petitioner believed that Mr. Fields was romantically involved with his female passenger.

17. Petitioner had one adult daughter; the adult daughter's three children, all under the age of nine years, and her own eight-year-old daughter with her in her car. According

to Petitioner's testimony, none of the four children in her car were young enough to require a car seat and none of her day care children were in her car. According to the police officer who later arrested Petitioner, there were six "children" in the back seat of Petitioner's car, not six people in the whole car.

Regardless of this discrepancy in testimony, it is undisputed that there were no car seats and insufficient car safety belts for the number of passengers in Petitioner's car on July 21, 1996.

18. Without approving either Petitioner's motivation or her reasoning, I find credible her testimony that she would not have taken her next actions had there been any day care children in her car because if day care parents found out about it, Petitioner could be "put in jeopardy"; she "could be in a lot of trouble"; and she would not have had day care children with her over a weekend. July 21, 1996 was, in fact, a Sunday.

19. In making the immediately foregoing Finding of Fact, I have not overlooked Ms. Brantley's testimony that on occasion Petitioner has kept Ms. Brantley's children in Petitioner's home on nights and weekends while Ms. Brantley traveled. However, even assuming arguendo, but not ruling, that six rather than four children were in Petitioner's car on July 21, 1996, there is no direct evidence that any of them were also day care clients.

20. Petitioner drove her car, filled with passengers, following Mr. Fields' van. Mr. Fields turned onto Nekoma Lane and pulled over to the side of the road. Petitioner pulled over and intentionally bumped her car into the back of Mr. Fields' van.

21. Petitioner and Mr. Fields exited their respective vehicles, and Petitioner demanded to know who Mr. Fields' female passenger was, even though Petitioner knew the passenger was named "Melissa." Some screaming ensued, and Petitioner and Mr. Fields "tussled," hitting and scratching each other. Petitioner and her adult daughter testified that they did not know who struck the first blow. The non-hearsay evidence is insufficient to establish that on this occasion Petitioner left a bite mark on Mr. Fields' arm. When Mr. Fields began to wield a stick he had picked up from the side of the road, Petitioner's adult daughter got between him and her mother.

22. Petitioner then drove her car, still containing its passengers, so as to follow Melissa, who had walked around the corner. Petitioner then "had a conversation" with Melissa.

23. There is no evidence that the children were anywhere except inside Petitioner's car during either her confrontation with Mr. Fields or with Melissa.

24. When the police arrived on the scene, Petitioner was arrested for battery and for driving with a suspended driver's license.

25. The suspended license charge arose because, when questioned by the police, Petitioner gave her name as "Veronica L. Wynn." Petitioner's legal name was, in fact, "Veronica Harris." Petitioner also told the officer that her date of birth was September 19, 1959, and that she lived at 2106 Monday Street. Petitioner's true date of birth is September 19, 1949, and her true address was 1229 Elberta Street. When the officer could not find a driver's license record for "Veronica L. Wynn," Petitioner told him that the name on her license might be "Veronica Lee Harris Wynn." After she gave him the name "Veronica Lee Harris Wynn," the officer found Petitioner's driver's license record and learned that her driver's license had been suspended. Petitioner had recently been divorced and had "gone back" to her maiden name, but she testified herein that on July 21, 1996, she deliberately gave incorrect information to the police because she knew her driver's license was suspended and the police were going to check on it.

26. Mr. Fields was provided with a pamphlet explaining his right to request domestic abuse protection and prosecution. Apparently, he did nothing about it.

27. Petitioner was charged, in an Information which recited the statutory language of both Subsections 784.03(1) (a) and (b), Florida Statutes (1995), with "battery (M1)," meaning "first degree misdemeanor battery." The Information cited only "Section 784.03, Florida Statutes," for that offense. The Information also charged Petitioner with "driving while license suspended or revoked (M2)" also a misdemeanor, under Section 322.34(1), Florida Statutes (1995). On August 28, 2000, Petitioner entered a "no contest" plea to both charges.

28. Petitioner was adjudicated guilty of misdemeanor battery and was ordered to serve 12 months of probation with the following conditions: (1) no contact with Frank Fields; (2) \$155.00 court costs; and (3) \$100.00 fine. She was also required to pay a monthly supervision fee while on probation and a fee for the services of the public defender.

29. There was no charge, plea, or sentence stating "domestic violence" or citing a domestic violence statute.

30. Petitioner was not required to attend a batterers' intervention program, pursuant to Section 741.281, Florida Statutes. No evidence was presented to show that the sentencing court had made written, factual findings that attendance at a batterers' intervention program would be an inappropriate condition for her probation.

31. Petitioner's probation was terminated in December 1997.

32. Petitioner miscarried her child conceived of Frank Fields before a live birth.

33. Petitioner's emotional connection with Mr. Fields seems to have terminated with the July 21, 1996, incident.

34. At the September 9, 1996, formal exemption hearing in Harris v. Department of Health and Rehabilitative Services, DOAH Case No. 96-2010 (see Finding of Fact Nos. 11-12) Petitioner and her witnesses did not divulge that six weeks earlier, on July 21, 1996, Petitioner had been arrested for her altercation with Frank Fields or that less than two weeks earlier, on August 28, 1996, Petitioner had pled "no contest" to battery of Frank Fields.

35. Petitioner testified in the instant case that she did not divulge the July 21, 1996, incident during the 1996 formal exemption proceeding before the Division because "it was not part of my day care home and had nothing to do with day care children."³

36. The Recommended Order in DOAH Case No. 96-2010 observed that "Petitioner, now a grandmother, testified tearfully to her errant behavior at the age of 21, over 24 years ago in New York. Petitioner has never been charged with any legal violation since that time, with the exception of traffic

tickets . . . since the [1973] incident, . . . Petitioner has lived an exemplary life" That Order recommended granting an exemption. The outcome of the Final Order, entered October 26, 1996, was that Petitioner was exempted from the 1973 felony disqualification.⁴

37. Petitioner contends that she never committed "domestic violence" and even if she did, she has been "rehabilitated" since July 21, 1996. She feels that she should be granted an exemption because she is sorry for what she did; because if she had been thinking, she would not have done it; and because she loves her day care children.

38. Since 1996, Petitioner has operated her family day care home and has pursued her goal of becoming a Master Provider of day care.

39. In order to become a Master Provider, one must have taken the Second Helping Course (a refresher course for experienced day care providers); have either a Child Development Associate Certificate or national accreditation; and have five years' experience. Currently, there are only two Master Providers in Leon County.

40. In 1998, Petitioner received a \$500.00 Caring for Kids Mini-Grant which she used to purchase day care toys.

41. In March 2000, Petitioner received a scholarship from the T.E.A.C.H. Early Childhood Project, which she had planned to

use to take classes at Tallahassee Community Hospital towards her Child Development Associate certification. Petitioner has put this project on "hold" during the pendency of the instant case.

42. In May 2000, Petitioner completed the Second Helping Course. In Leon County, only approximately 20 family home day care providers have taken this course.

43. In 2000, Petitioner received a \$275.00 Caring for Kids Mini-Grant which she used to help pay for her Second Helping Course.

44. Petitioner was selected to receive a Kids Incorporated Infant/Toddler Initiative Grant of \$3,000, which she intended to use to purchase toys and equipment for her day care home. Petitioner was hand-picked by Kids Incorporated because of her genuine love and concern for the children and because Kids Incorporated felt that Petitioner only needed additional toys and equipment in order to improve her day care home. However, because of the instant case, Kids Incorporated has not yet disbursed this money to Petitioner. Kids Incorporated wants to be assured the money will go to someone who will be a day care provider for the long-term.

45. Petitioner has volunteered for the school readiness program sponsored by Kids Incorporated, which has resulted in

additional visits and evaluations of her day care home. Her day care children have all scored "above average" in the program.

46. Katherine Schmidt, a Family Child Care Specialist with Kids Incorporated, testified that she has evaluated and assessed Petitioner's day care home in her capacity with Kids Incorporated and during the period she was helping Petitioner obtain the grants mentioned above. Ms. Schmidt believes Petitioner is an excellent day care provider and would not be a danger to the children in her care. Ms. Schmidt also believes Petitioner would be a benefit to the children and their families.

47. The Leon County Home Day Care Providers Association and Support Group meets monthly, and Petitioner regularly attends. Two day care providers wrote letters in support of Petitioner.

48. Cicely Brantley is a professional music education teacher in Leon County's public school system. Ms. Brantley's two children attend Petitioner's family day care home. She has seen Petitioner briefly at least five days per week for the last two years. Ms. Brantley's older child is two and one-half years old and has been in Petitioner's day care home since he was nine months' old. Her younger child is 15 months old and has been in Petitioner's day care home since she was eight weeks old. Ms. Brantley testified that she trusts Petitioner with her

children and that she trusts and values Petitioner's judgment when it comes to the children. Ms. Brantley often asks Petitioner's advice about parenting, discipline, and health issues involving her children. Ms. Brantley testified that other than her husband, Petitioner is the person she trusts the most with her children and that Petitioner goes above and beyond what most day care providers would do, both in education and care. Ms. Brantley was aware of the battery incident that occurred between Petitioner and Mr. Fields, but it did not change her opinion of Petitioner. She does not believe that Petitioner would ever be a danger to her children. Ms. Brantley really does not want to have to find other child care if Petitioner is unsuccessful in getting an exemption, and it is apparent that this concern has influenced her testimony.

49. Versee Hoffman is a Pioneer with the Jehovah's Witnesses. This means that she has committed to serving 70 hours per month with her ministry. Ms. Hoffman met Petitioner approximately five years ago through church. Ms. Hoffman and Petitioner studied the Bible together periodically. At that time, Ms. Hoffman felt that Petitioner was not really committed to the church or its moral standards, and their studies ended. Thereafter, Ms. Hoffman did not see Petitioner for approximately two years. In early 1999, Petitioner approached Ms. Hoffman and told Ms. Hoffman that she wanted to renew their Bible studies.

Ms. Hoffman agreed, and they have been studying the Bible together weekly ever since.

50. Ms. Hoffman testified that the Jehovah's Witnesses expect their members to attend five weekly meetings and that Petitioner consistently attends those meetings. Ms. Hoffman testified that Petitioner has grown spiritually and personally since Ms. Hoffman first met her five years ago. Ms. Hoffman believes that Petitioner is truly committed to leading a spiritual life and to meeting the Jehovah's Witnesses' moral standards against violence. Ms. Hoffman believes that Petitioner will continue to meet these standards.

CONCLUSIONS OF LAW

51. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this cause, pursuant to Section 120.57(1), Florida Statutes.

52. Petitioner contends (1) that she is not disqualified from holding a position of special trust, pursuant to Section 435.04, Florida Statutes, because she fits none of the disqualifying categories of Section 435.04, Florida Statutes, and that (2) even if it is determined that she is disqualified, she should be granted an exemption, pursuant to Section 435.07, Florida Statutes, because she has demonstrated rehabilitation.

53. The statutes in effect on July 21, 1996, govern the first issue. No subsequent amendments are of significance.

54. Section 435.04, Florida Statutes (1995), the disqualification statute, reads, in pertinent part, as follows:

435.04 Level 2 screening standards. --

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

(h) Section 794.03, relating to battery, if the victim of the offense was a minor.

(3) Standards must also ensure that the person:

(b) Has not committed an act that constitutes domestic violence as defined in s. 741.30. (Emphasis supplied)

55. Section 741.30, Florida Statutes (1995), did not, in fact, define "domestic violence," but Section 741.28, Florida Statutes (1995), defined "domestic violence" as follows:

(1) "Domestic violence" means any assault, aggravated assault, battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

(2) "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time.

56. Section 784.03, Florida Statutes (1995),
provided:

- (1) A person commits battery if he:
 - (a) Actually and intentionally touches or strikes another person against the will of the other; or
 - (b) Intentionally causes bodily harm to an individual.
- (2) Whoever commits battery shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

57. Section 741.281, Florida Statutes (1995),
provided:

Court to order batterers' intervention program attendance.--If a person is found guilty of committing a crime of domestic violence, as defined in s. 741.28, that person shall be ordered by the court to a minimum term of 1 year's probation and the court shall order that the defendant attend a batterers' intervention program as a condition of probation, if a person is admitted to a pretrial diversion program and has been charged with an act of domestic violence, as defined in s. 741.28, the court shall order as a condition of the program that the defendant attend a batterers' intervention program. The court must impose the condition of the batterers' intervention program for a defendant placed on probation or pretrial diversion under this section, unless it makes written factual findings in its judgment or order which are based on competent substantial evidence, stating why a batterers' intervention program would be inappropriate. It is preferred that such programs be certified under s. 741.32. The imposition of probation under this section shall not preclude the court from imposing any sentence of imprisonment authorized by s. 775.082. (Emphasis supplied)

58. Petitioner pled "no contest" and was convicted under Section 784.03, Florida Statutes (1995), of the first degree misdemeanor of battery. Her battery was upon Frank Fields, who was not a minor. Therefore, Petitioner cannot be disqualified from employment on the basis of Section 435.04(2)(h), Florida Statutes (1995).

59. Petitioner is subject to disqualification from employment on the basis of Section 435.04(3)(b), Florida Statutes (1995), if she committed an act which constitutes "domestic violence" as defined in Section 741.30 [sic: Section 741.28], Florida Statutes (1995). It is not necessary to determine that Petitioner was criminally charged or that she pled "no contest" or "guilty," or was "convicted of" a criminal charge of domestic violence.⁵

60. However, the fact that Petitioner was not charged with domestic violence nor required to attend a batterer's class in connection with the July 21, 1996, battery is persuasive that neither the battery victim, law enforcement, the State Attorney, nor any Article V Court has viewed the July 21, 1996, incident as "constituting domestic violence." See the requirements placed upon prosecutors and the judiciary, the rights of alleged victims, and the legislative intent expressed in Sections 741.29(1)(b), 741.2901(2), and 741.2902(1), Florida Statutes (1995).⁶

61. For purposes of determining if Petitioner has committed an act that constitutes domestic violence, as defined in Section 741.28, Florida Statutes (1995), Subsection (1) may be read, "Domestic violence means any . . . battery resulting in physical injury . . . of one family or household member by another who is or was residing in the same single dwelling unit."

62. The parties have spent a lot of time discussing the issue of whether or not there was a "physical injury" to Frank Fields by "biting," but biting is immaterial, due to the testimony concerning "scratching." That alone is sufficient evidence to establish that a physical injury to Mr. Fields occurred.⁷

63. It must next be determined if the relationship shared by Petitioner and Mr. Fields was contemplated by Section 741.28, Florida Statutes (1995).

64. Although Section 741.28, Florida Statutes (1995), relating to "domestic violence" has been codified within the statutory, "Title XLII Domestic Relations Chapter 741 Husband and Wife," living arrangements other than spousal relationships may be protected from "domestic violence," provided those relationships are listed in the statute.

65. Applying the definition of "family or household member," contained in Subsection 741.28(2), Florida Statutes,

Mr. Fields and Petitioner were not spouses, former spouses, or persons related by blood or marriage.

66. Petitioner and Mr. Fields also did not have "a child in common regardless of whether they had been married or resided together at any time." Only in one place can the undersigned locate a statutory definition of the word, "child."⁸ That definition, as well as the contexts in which the word "child" is used throughout all Florida's abuse protection statutes, presupposes a live birth. Moreover, in Love v. State, 450 So. 2d 1191 (Fla. 4th DCA 1984), the court held that the word, "person" in the battery statute does not include an unborn fetus. The court noted that the Legislature could amend the statute to protect unborn fetuses from battery but that the existing battery statute did not protect them.

67. Regrettably, the 1995 Florida Statutes did not define "residence" or "household member," as used in Section 741.28, Florida Statutes.

68. In assessing whether or not Petitioner and Mr. Fields were persons "presently residing together as if a family or persons who have resided together in the past as if a family," I am aware of a wealth of cases holding that the names of violent visiting boyfriends and girlfriends could not be put on the abuse registry under the pre-1994 statutory definition of "child abuse or neglect." The pre-1994 version of Section 415.503(3),

Florida Statutes, required that in order to be listed as a perpetrator of child abuse, one had to be either a parent or "adult household member," and sporadically visiting girlfriends and boyfriends were not considered "adult household members." See, e.g., Department of Health and Rehabilitative Services v. M.P. and S.F., DOAH Case Nos. 94-3959C and 94-4614C (Recommended Order entered February 22, 1995).

69. However, it appears to be the settled law of this state that what constitutes "residency" is a mixed question of law and fact to be determined from the evidence presented in each individual case. See General Guaranty Insurance Company v. Broxsie, 239 So. 2d 595 (Fla. 1st DCA 1970), quoting from Kiplinger v. Kiplinger, 147 Fla. 243, 2 So. 2d 870, which held:

The residence of a party consists of fact and intention. Warren v. Warren, 73 Fla. 764, 75 So. 35, LRA 1917E, 490. Residence indicates place of abode, whether permanent or temporary. Minick v. Minick, 111 Fla. 469, 149 So. 483. A resident is one who lives at a place with no present intention of removing therefrom. Tracy v. Tracy, 62 N.J. Eq. 807, 48A, 533. Whether or not a party is a resident is a question of law and fact to be settled or determined from the facts of each particular case.

70. Considerable research reveals that most Florida cases define either "resident," "residence," "family member," or "household" in terms of a specific insurance policy, which is not helpful in the present circumstances. However, in the

Broksie case, the appellate court approved the trial judge's enumeration of certain factors to be considered in determining who is a "relative residing in the same household," without reference to the private insurance policy in that case, as follows:

Whatever else may be embraced in the meaning of the term 'household' there is invariably involved a fixed house or place of abode and the presence of one or more persons who dwell there. When there is more than one person there is the common bond between such persons in the concept of family, that is, that all members of the household have ties of blood, marriage, or adoption among themselves. Those merely dwelling under the same roof does not constitute them members of the same household, but such is the result when they share common bonds of kinship and also share the facilities of the house for living purposes. The three ingredients are (1) close ties of kinship; (2) a fixed dwelling unit; and (3) enjoyment of each of [sic] part of the living facilities. The main thread of a household or family is the sharing of companionship and of living facilities of the dwelling unit by the members of the household. It is not limited to the family composed of a married couple and minor children or of one parent with a child or children . . . The term 'resident' has been defined as 'one who lives in a place as distinguished from a visitor or transient.' Webster's New 20th Century Dictionary, Second Edition. As has been pointed out in the Robinson case, *supra*, a person may have a residence in more than one place. What appears to distinguish a person as a resident or nonresident is that the resident is more than a mere visitor or transient, but lives at a place with additional attachments of such

significance as to render that person a more or less consistent part of the community

71. Black's Law Dictionary also gives numerous definitions of "family" and "household," all of which definitions involve at least a collective body of at least two persons living together in one house subject to general management or domestic government by one of them.

72. Only three Florida cases seem to have addressed who, other than a spouse, may be a perpetrator or victim of "domestic abuse."

73. In Sharpe v. Sharpe, 695 So. 2d 1302 (Fla. 5th DCA 1997), a sister-in-law sought and received a domestic violence injunction against her deceased husband's brother. Finding blood ties existed because the sister-in-law still had a living child by her deceased husband, the appellate court nonetheless dissolved the injunction because her petition had not claimed that she and her husband's brother had ever resided in the same household. The court held that without such an allegation, statutory domestic violence "had not occurred and could not occur." The court then discussed the case of Evans v. Evans, 599 So. 2d 205 (Fla. 2d DCA 1992), in which, because the adult estranged son of the petitioner's husband had never lived in the same household with the stepmother, the stepmother failed to

qualify as one protected by the domestic violence act then in effect.

74. In Kokoris v. Zipnick, 738 So. 2d 369 (Fla. 4th DCA 1999), the children's aunt moved to dissolve a domestic violence injunction that had been entered against her. The aunt, a blood relative of her nieces, did not prevail because, even though the aunt only temporarily stepped into the shoes of the mother for one week while the mother was hospitalized, the aunt was then acting as a substitute parent while the children lived with her. This presumably created the necessary family unit. In Kokoris the court interpreted Sharpe as follows:

In Sharpe v. Sharpe, 695 So. 2d 1302 (Fla. 5th DCA 1997), the Fifth District stated a two prong test regarding the relationship between the parties before the court can properly issue a statutory domestic violence injunction. . . . The first prong requires that the Petitioner have a familial or domestic relationship with the Respondent within the range of relationships identified in the statute. . . . The second prong requires that the parties either presently reside, or in the past have resided, with each other as a family or household in the same dwelling unit . . . Given the harm the legislature is seeking to avoid by providing a statutory remedy for domestic violence, namely the physical and emotional trauma and turmoil that flows from violence erupting in home environments, it is understandable that the legislature did not put time limits on how long persons must reside together to qualify for an injunction. Whether a living arrangement, however temporary in nature is 'residing in the same single dwelling unit' should be decided on a case-by-case basis.

75. Weighing the reasoning set out in each of the foregoing cases, it is here concluded that in the absence of the ties of kinship specifically listed in Section 741.28, Florida Statutes (1995), the remaining statutory phrase, "presently residing together as if a family or persons who have resided together in the past as if a family" (emphasis supplied) requires that there be some type of mutual obligation of support and nurture, some shared social or cultural responsibility, or some commitment to continue to live "as if a family." Something more is required than mere transient visitations for consensual sex.

76. Petitioner's and Mr. Fields' relationship never met the standard of "residing together as if a family." Their relationship constituted what the common law referred-to as "open concubinage" and what modern, vulgar slang refers to as "shacking-up."

77. Mr. Fields came and went at his unilateral whim, apparently eschewing all responsibility for the life he had helped to create. There is no evidence he ever provided any support or socialization for Petitioner or her living minor daughter who consistently shared the home that Petitioner -- not Mr. Fields -- provided. There is no evidence Mr. Fields had declared or considered Petitioner's house to be his legal domicile. There is unrefuted evidence that Mr. Fields

maintained a separate residence or household with his sister. At the very most, Mr. Fields sporadically spent 3/7 of his weekly "overnights" in Petitioner's home. There is no evidence that at any time Mr. Fields' next return to Petitioner's home could be predicted. There is no evidence Mr. Fields or Petitioner ever held themselves out to be a family unit, committed themselves to forming a family unit, or behaved "as if a family". The battery did not take place in the "household" of Petitioner or of Mr. Fields. Therefore, it must be concluded that Petitioner's 1996 battery of Mr. Fields did not constitute an act of domestic violence.

78. Having determined that Petitioner has not committed an act which constitutes domestic violence, it therefore follows that Petitioner should not have been disqualified to work in a position of special trust. Therefore, she was not required to prove rehabilitation in this proceeding, and the second issue raised herein is moot.

79. Furthermore, because DCF gave Petitioner the option to timely contest the accuracy of the record or seek an exemption and she has timely requested a hearing on both issues in the alternative, she has never waived her right to contest the accuracy of the record. Having determined the record is inaccurate at least to the extent that DCF considers the battery to be "domestic violence," this proceeding may not go on to

determine the second and alternative issue of rehabilitation vel
non.

80. That being said, DCF is now aware that Petitioner has many supporters in the child care provider community and has distinguished herself therein by education, training, and experience over the four years intervening since the 1996 battery. The Agency also is aware that over four years ago, Petitioner was conducting a legally unsanctioned sexual relationship in her home. It is clear also that at that time, Petitioner drove a car, knowing her driver's license was suspended. She drove that car with unbelted child guest passengers in a reckless manner, deliberately bumping Mr. Fields' car. She then committed an act of violence against the father of the unborn child she carried in her body. Her testimony herein and in prior proceedings, both formal and informal, has been persistently dishonest and/or evasive. She admittedly lied to police officers in the presence of her daughters and grandchildren.

81. These events and Petitioner's frequent variances from the truth may raise concerns about her credibility in grant applications and concerns about her moral fitness and the quality of her judgment for purposes of re-licensing her as a caretaker of children, but she may not be disqualified, pursuant to Section 435.04(3)(b), Florida Statutes, solely because of her

1996 battery conviction, because that conviction does not constitute domestic violence as defined in Section 741.30, [sic. 741.28] Florida Statutes (1995).

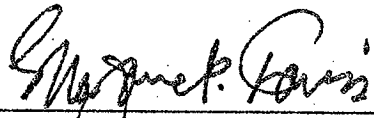
RECOMMENDATION

Based upon the findings of fact and conclusions of law, it is

RECOMMENDED:

That the Department of Children and Family Services enter a final order determining that Petitioner is not disqualified from working in a position of special trust solely on the basis of her 1996 battery conviction.

DONE AND ENTERED this 17th day of November, 2000, in Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
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www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of November, 2000.

ENDNOTES

- ^{1/} The 1995 Affidavit clearly lists "Section 782.07 manslaughter" and requires disclosure of a plea of guilty or nolo contendere to any listed felony "or under similar statutes of other jurisdictions." DCF asserted that Petitioner's failure to make full disclosure undermines her credibility in the instant proceeding. More damaging to Petitioner's credibility and assertion of good moral character is the fact that she testified in the instant proceeding that in 1995, she had not disclosed her 1973 New York manslaughter conviction because "it was 23 years ago and I didn't think it applied to my getting my day care license."
- ^{2/} Respondent's witness, Ms. LeClair, recalled Petitioner telling her review committee during informal proceedings that Mr. Fields stayed over two to three nights per week, but Ms. LeClair's recollection versus Petitioner's recollection of out-of-court statements is insufficient impeachment of Petitioner's in-court testimony, in light of Petitioner's conceding in that testimony that sometimes Mr. Fields stayed with her three nights in some weeks. This discrepancy, by itself, does not diminish Petitioner's credibility herein.
- ^{3/} As disingenuous as Petitioner's testimony was on this point, the evidence falls short of proving that any question was directly posed to Petitioner in the prior case which would elicit whether she had, in fact, had any convictions of any kind since 1973. Cf. Finding of Fact 36 n.4, below.
- ^{4/} Reading this Order in light of the evidence adduced in the instant proceeding leaves no doubt that Petitioner intentionally misled the trier of fact in the prior proceeding.
- ^{5/} Petitioner's assertion that Anderson v. Department of Health and Rehabilitation, 485 So. 2d 849 (Fla. 1986), precludes such a conclusion is rejected. See discussion in footnote 4 of the Recommended Order in Gunn v. Department of Children and Families, DOAH Case No. 96-2554, entered February 24, 1997 and footnote 1 of the Final Order entered June 7, 1997. Also see Dutton v. Department of Children and Family Services, DOAH Case No. 98-5169 (Recommended Order entered April 6, 1999; Final Order entered August 11, 1999) holding that a plea to simple assault was a disqualifying commission of domestic violence because the surrounding circumstances and admissions of the accused met the statutory definition of "domestic violence."

^{6/} Section 741.29(1)(b), Florida Statutes (1995), provided for officers to give written material to alleged victims explaining how to file a criminal complaint with the State Attorney. (See Finding of Fact 26).

Section 741.2901(2), Florida Statutes (1995), provided:

It is the intent of the Legislature that domestic violence be treated as a criminal act rather than a private matter.

Section 741.2902(1), Florida Statutes (1995), provided:

It is the intent of the Legislature with respect to domestic violence cases, that at the first appearance the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released and exercise caution in releasing defendants.

^{7/} See R.H. v. State, 709 So. 2d 129 (Fla. 4th DCA 1998) and the Final Orders entered October 17, 1996 in Berry v. Department of Children and Families, DOAH Case No. 97-1127, and October 21, 1996, in Moseley v. Department of Children and Families DOAH Case No. 97-0368.

^{8/} Section 39.01, Florida Statutes, addresses delinquency and dependency matters and states, "child" means an unmarried person under the age of 18 years who has been emancipated by order of the court. . . ." Section 1.01, Florida Statutes, defines "person."

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

VERONICA HARRIS,

Petitioner,

v.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,
(DISTRICT 2)

Respondent.

CASE NO. 00-2824
RENDITION NO. DCF-01- 140-FO
(Exemption Denied/Revoked)

FILED

JUN 18 2001

DCF Department Clerk

RECEIVED JUN 20 2001

**FINAL ORDER REJECTING RECOMMENDED ORDER
OR, IN THE ALTERNATIVE, REVOKING EXEMPTION**

THIS CAUSE is before me for entry of a Final Order based on a corrected Recommended Order issued by an Administrative Law Judge (ALJ) assigned by the Division of Administrative Hearings (DOAH). The Corrected Recommended Order is attached and incorporated by reference. I adopt its findings of fact and conclusions of law. The district's exceptions are denied.

This is the second time that the petitioner has asked for an exemption from the Department. The first time was in 1996, when the petitioner sought and secured an exemption for felony manslaughter. The attached Corrected Recommended Order clearly illustrates that the petitioner committed fraud in obtaining her first exemption. Consequently,

that exemption is hereby rescinded, which acts to disqualify petitioner from working in a position of special trust.

DONE and ORDERED this 18th day of June, 2001, in

Tallahassee, Leon County, Florida.


KATHLEEN A. KEARNEY, Secretary
Department of Children and Family Services

Copies furnished to:

Ella Jane P. Davis
Administrative Law Judge
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Veronica Harris
C/o Yelene Goin, Esquire
320 Johnston Street
Tallahassee, FL 32303

NOTICE OF RIGHT TO APPEAL

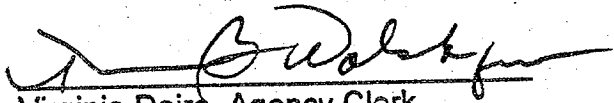
This order constitutes final agency action under Chapter 120, Florida Statutes. A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the rendition of this final order.¹

¹The date of the "rendition" of this Final Order is the date that is stamped on its first page. The Notices of Appeal must be received on or before the thirtieth day after that date.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing FINAL ORDER has been sent by U. S. Mail or hand delivery to each of the above-named persons this 18th day of

June, 2001



Virginia Daire, Agency Clerk
Department of Children and Family Services
1317 Winewood Blvd. Bldg. 2 Room 202B
Tallahassee, FL 32399-0700

TAB 2, PETITIONER'S EXHIBITS

1. Affidavit of Good Moral Character (Pet. Ex. 1) 2.1
2. Sworn Affidavit of Good Moral Character (Pet. Ex. 2) 2.3
3. Charging Sheet (Pet. Ex. 3) 2.5
4. Plea and Acknowledgement of Rights (Pet. Ex. 4) 2.7
5. Letter of Department of Children and Families Dated
March 21, 2000 (Pet. Supp. Ex. 10) 2.9
6. Request for an Exemption from Disqualification
(Pet. Supp. Ex.11) 2.12
7. Request to Contest Accuracy of the Record (Pet. Supp. Ex.12) 2.14
8. Letter of Department of Children and Families Dated
June 22, 2000 (Pet. Supp. Ex. 13) 2.16
9. Request for Chapter 120 Hearing (Pet. Supp. Ex. 14) 2.18



STATE OF FLORIDA
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

AFFIDAVIT OF GOOD MORAL CHARACTER

STATE OF FLORIDA)

COUNTY OF Leon)

Before me this day personally appeared VERONICA HARRIS
who, being duly sworn, deposes and says:

As an applicant for employment in a position of trust with

Veronica Harris Family Day Care Home

I hereby attest to meeting the requirements for employment, that I am of good moral character, that I have not been found guilty of, regardless of adjudication, or having entered a plea of nolo contendere of guilty to, any felony, prohibited under any of the following provisions of the Florida Statutes or under similar statutes of other jurisdictions, or having had a finding of delinquency or entered a plea of nolo contendere or plea amounting to an admission of guilt to a petition alleging delinquency pursuant to Part II, Chapter 39, Florida Statutes, or similar statutes of other jurisdictions, for any of the following acts, regardless of adjudication or disposition and regardless of whether or not those records have been sealed or expunged.

Sec. 782.04 murder
782.07 manslaughter
782.071 vehicular homicide
782.09 killing of an
unborn child by
injury to the
mother
784.011 assault, if the
victim of the
offense was a
minor
784.021 aggravated assault
784.03 battery, if the
victim of the
offense was a
minor
784.045 aggravated battery
787.01 kidnapping
787.02 false imprisonment

Sec. 787.03 moving children
from the state or
concealing children
contrary to court
order
794.011 sexual battery
794.041 prohibited acts or
persons in
familial or
custodial
authority
prostitution
Chap 796
Sec. 798.02 lewd and
lascivious
behavior
Chap 800
lewdness and
indecent exposure
Sec. 806.01 arson
812.13 robbery

Sec. 826.04	incest	Chap 893	drug abuse preven-
827.03	aggravated child		tion and control
	abuse		if the offense was
827.04	child abuse		a felony or is any
827.05	negligent		other person
	treatment of		involved in the
	children		offense was a
827.071	sexual performance		minor
	by a child	Sec. 817.563	fraudulent sale of
827.09	abuse, neglect or		controlled
	exploitation of		substances only if
	aged or disabled		the offense was a
	adults		felony.
Chap 847	obscene literature		

I further attest that I have not been judicially determined to have committed abuse against a child as defined in Section 39.01(2) and (7), Florida Statutes, or to have a confirmed report of abuse as defined in chapter 415, Florida Statutes, or to have committed an act which constitutes domestic violence as defined in Section 741.30, Florida Statutes.

Under the penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Veronica Harris
Affiant

OR

To the best of my knowledge and belief, my record may contain one of the foregoing disqualifying acts or offenses.

Affiant

Sworn to and subscribed before me this _____ day of

20th April, 19____.
Sworn to and subscribed before me this _____ day of _____, 19____.
1995 by Veronica Harris who is personally known to me.

James Everett
Notary Public, State of Florida
My Commission Expires July 31, 1995
My Commission Expires
JAMES EVERETT

Notary Public
State of Florida

A-2.2



AFFIDAVIT OF GOOD MORAL CHARACTER

State of Florida

County of Leon

Before me this day personally appeared Veronica L. Harri who, being duly sworn, deposes and says:

I am an applicant for employment as a caretaker with:

Harri Child Care Home

By signing this form, I am swearing that I have not been found guilty or entered a plea of guilty or nolo contendere (no contest), regardless of the adjudication, to any of the following charges under the provisions of the Florida Statutes or under any similar statute of another jurisdiction. I also attest that I do not have a delinquency record that is similar to any of these offenses.

I understand I must acknowledge the existence of any criminal records relating to the following list regardless of whether or not those records have been sealed or expunged. I understand that I am also obligated to notify my employer of any possible disqualifying offenses that may occur while employed in a position subject to background screening under Chapter 435, Florida Statutes.

Relating to:

Sections: 415.111	adult abuse, neglect, or exploitation of aged persons or disabled adults
741.30	domestic violence and injunction for protection
782.04	murder
782.07	manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child
782.071	vehicular homicide
782.09	killing an unborn child by injury to the mother
784.011	assault, if the victim of offense was a minor
784.021	aggravated assault
784.03	battery, if the victim of offense was a minor
784.045	aggravated battery
784.075	battery on a detention or commitment facility staff
787.01	kidnapping
787.02	false imprisonment
787.04(2)	taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings
787.04(3)	carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person
790.115(1)	exhibiting firearms or weapons within 1,000 feet of a school
790.115(2)(b)	possessing an electric weapon or device, destructive device, or other weapon on school property
794.011	sexual battery
794.041	prohibited acts of persons in familial or custodial authority
Chapter: 796	prostitution
Section: 798.02	lewd and lascivious behavior
Chapter: 800	lewdness and indecent exposure
Section: 806.01	arson
Chapter: 812	felony theft and/or robbery and related crimes, if a felony
Sections: 817.563	fraudulent sale of controlled substances, if the offense was a felony
825.102	abuse, aggravated abuse, or neglect of disabled adults or elderly persons
825.1025	lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult
825.103	exploitation of disabled adults or elderly persons, if the offense was a felony
826.04	incest
827.03	child abuse, aggravated child abuse, or neglect of a child
827.04	contributing to the delinquency or dependency of a child
827.05	negligent treatment of children
827.071	sexual performance by a child
843.01	resisting arrest with violence

A-2.3

ONE OF THE FOLLOWING STATEMENTS MUST BE MADE:

Veronica L. Hain
Signature of Affiant

OR

Veronica L. Harris
Signature of Affiant:

OR

Signature of Affiant

OR

Signature of Affiant

This day of September, 2000
Theresa E. O'Brien
 NOTARY PUBLIC, STATE OF FLORIDA

7-2.4

IN THE COUNTY COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

STATE OF FLORIDA

CASE NO. *C 96-10870 AMH2*
CREATE FROM R96-2509AF
SPN. 99881

VS.

INFORMATION

Veronica L. Wynn
BL/F. 09/19/49
SSN 264-94-0117
Defendant(s).

FILED
2003-9 1111-42
LEON COUNTY, FLORIDA

INFORMATION FOR:

I: BATTERY (M1)
II: DRIVING WHILE LICENSE SUSPENDED OR REVOKED (M2)

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

WILLIAM N. MEGGS, State Attorney for the Second Judicial circuit of the State of Florida,
charges that in Leon County, Florida, the above named defendant(s):

COUNT I: On July 21, 1996, did unlawfully actually and intentionally touch or strike Frank Fields,
against the will of said victim or did intentionally cause bodily harm to that individual, contrary to
Section 784.03, Florida Statutes.

COUNT II: And on July 21, 1996, did unlawfully drive a motor vehicle upon a highway of this state,
while said defendant's license or driving privilege was cancelled, suspended, or revoked, before or after
actual or constructive notice of such cancellation, suspension or revocation, contrary to
322.34(1), Florida Statutes.

STATE OF FLORIDA
COUNTY OF LEON

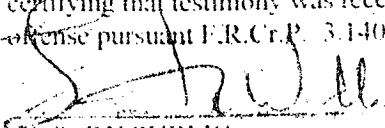
WILLIAM N. MEGGS, STATE ATTORNEY
SECOND JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR LEON COUNTY

Ronald W. Flury
Ronald W. Flury
Assistant State Attorney

STATE OF FLORIDA, COUNTY OF LEON
I HEREBY CERTIFY that the above and foregoing is a true and correct copy of an instrument filed in the public records of Leon County, Florida.
WITNESS my hand and seal of office this *2000* day of *April*
DAVE LANG
Clerk of County Court
D. Flury
DB

A-2.5

The foregoing instruments was acknowledged before me on August 8, 1996, by Ronald W. Flury who is known to me and did take an oath stating good faith in instituting the prosecution and certifying that testimony was received under oath from the material witness or witnesses for the offense pursuant F.R.Cr.P. 3.1-40(g).


NOTARY PUBLIC

PLEA 8 26/96 3E AT 8:15 A.M. ASA Ronald W. Flury

A-2.6

IN THE COUNTY COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

Case No: C96-10870 am

STATE OF FLORIDA

v.

VERONICA L. WYNN,

Spn. 99881

Defendant *AKA Veronica L. Harris*

RECORDED IN THE PUBLIC
CLERK'S OFFICE
LEON COUNTY, FLORIDA

AUG 28 4 38 PM '96

1476788

PLEA AND ACKNOWLEDGMENT OF RIGHTS

I hereby enters an plea of no contest to the following criminal offense(s),

Count 1: Offense: BATTERY + DWLSR Max Penalty: 1Yr.

My plea is entered with the understanding that the state has agreed to the following disposition of my case:

DO NOT
Adjudication of guilt. Twelve months probation with the following conditions, no contact with Frank Fields, \$155.00 court costs and \$100.00 fine. Probation may be terminated after nine months if all conditions completed and defendant relocates out of state. *cts Concurrent*

(1) I understand that the judge will place me under oath to question me about this plea. I must answer the judge's questions truthfully, and if I make a false statement while under oath I could be prosecuted for perjury.

(2) I understand that a plea of no contest means that I will not challenge the evidence against me. I also understand that if the judge accepts this plea of no contest, there will be no trial and that I will be sentenced based on my plea.

(3) I understand the nature of the charges to which I am pleading and I am aware of the maximum and minimum penalties. My lawyer has informed me of the facts the State would have to prove before I could be found guilty, and discussed with me any possible defenses that could be raised in my case. I am satisfied with my lawyer's advice.

STATE OF FLORIDA, COUNTY OF LEON
I HEREBY CERTIFY that the above is a true and correct copy of an instrument filed in the public records of Leon County, Florida.
WITNESS my hand and seal of office this
DAVE LANG
Clerk of County Court



(4) I understand that if the Judge accepts this plea, I give up the right to formal discovery and depositions under Rule 3.220 of the Florida Rules of Criminal Procedure and that my attorney will conduct no further investigation of the facts of my case. I give up the right to require the State to prove the charge against me beyond a reasonable doubt, the right to have a jury decide whether I am guilty or not guilty, the right to see and hear the witnesses against me and to have my lawyer question those witnesses, the right to subpoena and present witnesses or other evidence of any defenses I may have, and to testify or remain silent as I choose.

(5) I understand that by pleading no contest I am giving up the right to appeal all matters relating to my guilt or innocence. The only matters I would be able to appeal are those relating to my sentence and the judge's authority to hear my case. I understand that I will have 30 days to pursue any appeal, and if I cannot afford a lawyer, one can be appointed for me.

(6) I understand that if I am not a United States citizen, a plea of no contest could result in my deportation.

(7) I understand that if I enter a plea of no contest to a charge involving a controlled substance, my driver's license, or my ability to obtain one may be suspended or revoked for up to two years.

(8) I understand that if I am placed on probation I will be required to pay a monthly costs of supervision fee.

(9) I understand that, as required by Florida law, the judge will assess a fee against me for the services of the public defender.

(10) I have read this entire form carefully, and I understand all of the rights and duties explained in it. I state to the Court that I am not under the influence of drugs or alcohol, that no one has forced or threatened me to enter this plea, and that I am entering this plea freely and voluntarily. I acknowledge that I am entering this plea because I believe it is in my best interest.

SWORN TO AND FILED in open court in the presence of my lawyer and the Judge this 28 day of August, 1992

Veronica Harris
DEFENDANT

I hereby certify that I am counsel for the defendant and that I have informed the defendant of the nature of each charge against him/her, the maximum penalty, any applicable minimum penalty, the required elements of proof, and any possible defenses. I believe the defendant understands the rights and duties explained in this plea form and that the defendant is entering this plea freely and voluntarily with a full and complete understanding of the consequences.

[Signature]
COUNSEL FOR THE DEFENDANT
[Signature]
COUNTY JUDGE

Plea Accepted and Plea Form Filed by

Pet. Supplemental Ex. 10



Jeb Bush
Governor

Kathleen A. Kearney
Secretary

March 21, 2000

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED
CERT #: Z 008 034 481

Ms. Veronica Harris
1229 Elberta Dr.
Tallahassee, Florida 32304

Dear Ms. Harris:

This is to advise you that the Department of Children and Families has established that you are ineligible to hold a position of special trust. Individuals in these positions are those who are employed, volunteer or reside in a place which provides care or training to children or developmentally disabled people, as defined by Chapter 402, Florida Statutes. You must therefore immediately be removed from your position of special trust.

The ineligibility status is based on:

Record Type	Date of Offense	City/State
Domestic Battery	07/21/1996	Tallahassee, FL

The following avenues of appeal are available to you, and if you desire, you may choose one or both:

I. Exemption from Disqualification

You may request an exemption from disqualification. An exemption means that even though the offense was committed, you feel that the record should not disqualify you from being in a position of special trust. If an exemption is granted, you will again be eligible to hold a position involving children or the developmentally disabled. Exemptions will be granted only when the department has clear and convincing evidence to support a reasonable belief that good moral character can be established, and/or you have been rehabilitated so as to justify an exemption.

District 2
2639 North Monroe Street, 100A, Tallahassee, Florida 32399-2949

The Department of Children and Families is committed to working in partnership with local communities to ensure safety, well-being and self-sufficiency for the people we serve.

A-2.9

In reviewing a request for exemption, the following factors are considered:

1. the circumstances surrounding the incident,
2. the time period that has elapsed since the incident,
3. the nature of the harm occasioned to the victim,
4. the history of the person since the incident or,
5. such other circumstances that shall by the aforementioned standards indicate that the person will not present a danger to the safety or well being of children or the developmentally disabled.

To request an exemption hearing, you must, within fifteen (15) days of receipt of this notice, submit a written request on attachment B to:

John M. Awad, Ph.D., District Administrator
Cedars Executive Center
2639 North Monroe Street, Suite 200-A
Tallahassee, Florida 32399-2949

Any available evidence that you wish to submit should be sent in with the request. You will be advised of the time and place of the exemption committee meeting and may attend and/or send a representative in your behalf.

If you are dissatisfied with the Department's decision on your request, you may request an Administrative Hearing under Chapter 120, Florida Statutes.

II. Contesting the Accuracy of the Record(s)

If you have information to show that the record used to disqualify you is not correct, you may also contest the accuracy of the record(s) by requesting an Administrative Hearing under Chapter 120, Florida Statutes. In such a hearing, you may not reargue the facts of the case or challenge a previous determination of guilt. You may only present evidence which proves the record itself is incorrect (regarding such things as a charge/conviction recorded incorrectly) or a mistake in identity wherein the record actually does not apply to you. Requests for such hearing must be received by the Department of Children and Families Agency Clerk within 30 days of your receipt of this notification. These hearings are conducted in accordance with the Florida Administrative Code, Chapter 10-2 and 28-5.

To contest the accuracy of the record, within thirty (30) days, you must submit attachment A and a copy of this letter to the following address:

Agency Clerk, Office of the General Counsel
Department of Children and Families
1323 Winewood Boulevard, Building One, Room 407
Tallahassee, Florida 32399-0700

If you do not request an exemption hearing within fifteen (15) days or an accuracy of the record(s) hearing within thirty (30) days, you shall be permanently disqualified from holding a position of special trust anywhere in the State of Florida. If you wish to pursue one of the appeals, YOU MAY NOT HAVE DIRECT CONTACT WITH CHILDREN OR THE DEVELOPMENTALLY DISABLED UNLESS AND UNTIL AN APPEAL IS GRANTED.

YOU WILL BE AUTOMATICALLY AND PERMANENTLY DISQUALIFIED FROM A POSITION OF SPECIAL TRUST UNLESS YOU ACT WITHIN THE TIME LIMITS.

The agency/employer which conducted your background screening is being advised of your disqualification and the action he/she must take, but has not been given any specific information about your offense.

Should you have any questions about any of the above information, please call Chris LeClair, at (850) 487-1278.

Sincerely,



John M. Awad, Ph.D.
District Administrator



Attachments

cc: Leon County
Child Care Licensing

Pet. Supplemental Exhibit II

REQUEST FOR AN EXEMPTION FROM DISQUALIFICATION

TO: Chris LeClair
Background Screening Coordinator
2639 North Monroe Street, Suite 100-A
Tallahassee, Florida 32399-2949

I received notification of my ineligible status on 3/21/00.

I am hereby requesting an exemption. I feel that I am of good character and should be allowed to continue work as a caretaker because: I have been a

dependable + responsible child care provider
for five years. My primary objective is to
provide quality and loving care for all my
day care children. My parents are very satis-
fied with the services I have rendered. I am
currently enrolled in second helping course to
enhance my child care skills. I was recently
awarded a scholarship to attend Tallahassee
Community College to obtain my CDA license. I
have invested a lot of time and effort in becoming
a child care professional. This job is my only (love)
I understand it is my responsibility to send in or present at the review any
information which will prove that I should be granted an exemption.

RECEIVED

MAR 29 2000

BACKGROUND SCREENING

VERONICA HARPER
Signature
Veronica Harper
Name
1229 Elberta Dr
Address

575-9072
Phone

A-2.12

can of support & I enjoy doing it. Please consider
my request for a hearing.

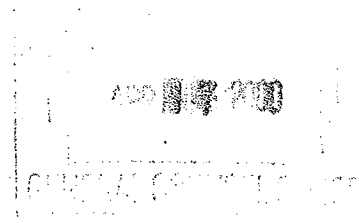
Thank,

V. Harris

Pet. Supplemental Ex 12

REQUEST TO CONTEST ACCURACY OF THE RECORD

TO: Agency Clerk, Office of General Counsel
Department of Children and Families
1323 Winewood Boulevard
Building One, Room 407
Tallahassee, Florida 32399-0700



I received notification of my ineligible status on March 21, 2000.

I am hereby requesting a hearing to Contest the Accuracy of the Record used to disqualify me from employment in a position of special trust.

I understand that this request does not allow me to challenge a previous determination of guilt, but is an opportunity to show that a mistake has been made. I understand that I may contest errors of the record only, such as a mistake in identity, or the use of a criminal record listing a felony offense when the conviction was for a misdemeanor.

I understand it is my responsibility to send in (or present at the hearing) evidence which will prove the inaccuracy of the record used to disqualify me.

The reason the record is inaccurate is: The Department of Children and Families has determined that I am ineligible to hold a position of special trust based on a "Domestic Battery" offense on July 21, 1996. However, I was charged with and plead no contest to misdemeanor battery pursuant to Section 784.03, Florida Statutes. (See attached Information and Plea and Acknowledgment of Rights). The battery offense was not treated as domestic violence pursuant to Section 741.28, Florida Statutes. (See attached Information and Plea and Acknowledgment of Rights). Furthermore, all persons found guilty of domestic violence must attend a batterers' intervention program as a condition of probation. See, Section 741.281, Florida Statutes. I was not required to attend such a program. (See attached documents). Therefore, the battery offense is not a disqualifying offense pursuant to Section 435.04, Florida Statutes.

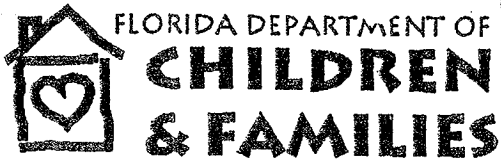
In addition, the records contained in the Department's files which are being used to disqualify me include an Arrest/Notice to Appear/Probable Cause Affidavit that includes numerous incorrect facts. There was no screwdriver or weapon involved; I did not bite Mr. Fields and I did not smash a drinking glass on the ground or try to cut Mr. Fields with broken glass.

Veronica Harris

Veronica Harris
1229 Elberta Drive
Tallahassee, Florida 32304
(850)575-9072

Robert C. Apgar

Robert C. Apgar
Florida Bar No. 254126
Yeline Goin
Florida Bar No. 934593
902-A North Gadsden Street
Tallahassee, Florida 32303
(850)224-9343; Fax (850)224-3083



Jeb Bush
Governor

Kathleen A. Kearney
Secretary

June 22, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
CERT #: Z 008 034 659

Yeline Goin, Esquire
902-A North Gadsden Street
Tallahassee, FL 32303

Dear Ms. Goin:

This is to advise you that your request for exemption pursuant to Laws of Florida governing background screening on behalf of your client, Veronica Harris has been denied.

Should your client wish to appeal this finding, she may request a hearing under the Administrative Procedures Act (Chapter 120, Florida Statutes). These hearings are conducted in accordance with Florida Administrative Code 10-2 and 28-5. If your client desires to request such a hearing, she must complete the attached form within 30 calendar days from receipt of this letter. Your client's request must be mailed to:

Agency Clerk
Office of the General Counsel
Department of HRS
Building 1, Room 407
1323 Winewood Boulevard
Tallahassee, Florida 32399-0700

Failure to request such a hearing within 30 days will operate as a consent to and acknowledgement of the correctness of the Department's refusal to grant your client an exemption.

Pending this determination, your client can not be involved in a position having direct contact with children or developmentally disabled adults. Your client cannot be involved in the operation of a family day care home, be employed in a day care center working with or supervising children or any other facility which falls under the parameters of the screening laws.

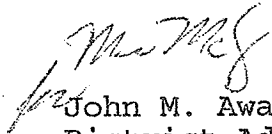
District 2
2639 North Monroe Street, 100A, Tallahassee, Florida 32399-2949

The Department of Children and Families is committed to working in partnership with local communities to ensure safety, well-being and self-sufficiency for the people we serve.

A-2.16

If we can provide further information regarding this procedure, please contact Chris LeClair, District Screening Coordinator at 487-1278.

Sincerely,

A handwritten signature in dark ink, appearing to read "John M. Awad", is written over the printed name.

John M. Awad, Ph.D.
District Administrator

Attachment

Pet. Supplemental Ex. 14

Attachment A

DEPARTMENT OF CHILDREN AND FAMILIES

DISTRICT 2

REQUEST FOR CHAPTER 120 HEARING

TO: Department of Children and Families
District Legal Office
2639 N. Monroe Street
Room 100-A
Tallahassee, Florida 32399-2949

I, VERONICA HARRIS would like to request a hearing
Name (Please Print)

under Chapter 120, Florida Statutes.

I received notification of the denial of my exemption request on 6/26/2000
Date

Veronica Harris 6/26/2000
Signature/Date

1229 E/6th St.
Street Address

Tallahassee, FL 32304
City/State/Zip

850/ 575-9072
Home Telephone

A-2-18

TAB 3

RESPONDENT'S EXHIBITS

1. Final Order and Recommended Order dated
October 3, 1996 (R-1) 3.1
2. Clerk's Court Worksheet VOP Arraignment Information (R-2) ... 3.12

STATE OF FLORIDA
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

VERONICA HARRIS

Petitioner,

CASE NO. 96-2010
RENDITION NO. HRS-96- 351 -FOF-RCD

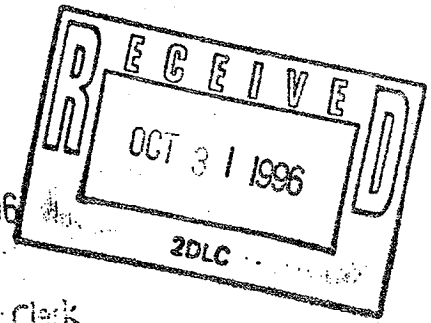
v.

DEPARTMENT OF HEALTH AND
REHABILITATIVE SERVICES,

Respondent.

FILED

OCT 30 1996



HRS Department Clerk

FINAL ORDER

THIS CAUSE is before me for consideration of the hearing officer's September 10, 1996, Recommended Order concluding that the department erred by denying petitioner an exemption from disqualification from employment in a position having direct contact with children or the developmentally disabled. No timely exceptions to the Recommended Order have been filed.

The Recommended Order is approved and adopted. Accordingly, it is ORDERED that petitioner is hereby granted an exemption from disqualification from working in direct contact with children or

R-1

A-3.1

the developmentally disabled. § 402.305(2)(c)1.a., Fla. Stat.
(Supp. 1994).

DONE and ORDERED this 26th day of October, 1996, in
Tallahassee, Leon County, Florida.

EDWARD A. FEAVER, Secretary
Department of Health and
Rehabilitative Services

By:



CHARLES KIMBER

Deputy Secretary for
Human Services

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF HRS, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

Don W. Davis, Hearing Officer
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

A-3.2

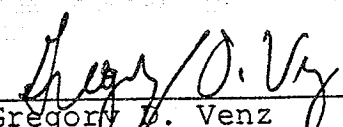
John Perry, Esquire
District 2 Legal Office
Department of Health and
Rehabilitative Services
2639 North Monroe Street
Tallahassee, FL 32399-2949

Chris LeClair
Background Screening Coordinator
Department of Health and
Rehabilitative Services
2639 North Monroe Street
Tallahassee, FL 32399-2949

Marc Taps, Esquire
Legal Services of North Florida
2119 Delta Blvd.
Tallahassee, FL 32303

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing FINAL
ORDER has been sent by U. S. Mail or hand delivery to each of the
above-named persons this 30, day of October, 1996.



Gregory P. Venz
Agency Clerk
Department of Health and
Rehabilitative Services
1323 Winewood Blvd.
Tallahassee, FL 32399-0700
(904) 488-2381

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VERONICA HARRIS,

Petitioner,

vs.

DEPARTMENT OF HEALTH AND
REHABILITATIVE SERVICES,

Respondent.

CASE NO. 96-200 **FILED**

SEP 11 1996

HRS Department Clerk

RECOMMENDED ORDER

Following notice to all parties, Don W. Davis, a Hearing Officer for the Division of Administrative Hearings, held a final hearing in the above-styled case on September 9, 1996, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Marc Taps, Esquire
Legal Services of North Florida
2119 Delta Boulevard
Tallahassee, Florida 32303

For Respondent: John Perry, Esquire
District 2 Legal Office
Department of Health and
Rehabilitative Services
2639 North Monroe Street
Tallahassee, Florida 32399-2949

STATEMENT OF THE ISSUE

Should Petitioner be granted an exemption from disqualification in providing child care services or certain adult care services?

PRELIMINARY STATEMENT

By request filed on March 6, 1996, Petitioner's counsel requested formal proceedings in response to Respondent's prior

A-3.4

denial of Petitioner's request for exemption from disqualification of employment in providing care for children or developmentally disabled adults.

On April 30, 1996, the matter was referred to the Division of Administrative Hearings for further administrative proceedings.

At the final hearing, Respondent presented one exhibit and testimony of one witness. Petitioner presented testimony of five witnesses and four exhibits.

No transcript of the final hearing was provided. Both parties also waived submission of proposed findings of fact.

FINDINGS OF FACT

1. On November 13, 1995, Respondent preliminarily established that Petitioner was disqualified to hold a caretaker position providing care or training to children or developmentally disabled individuals. The denial was based upon Petitioner's failure to meet minimum screening requirements specified by Section 435.04(2)(b), Florida Statutes, which seeks to prevent the employment in positions of trust and responsibility of those individuals found guilty of violation of Section 782.04, Florida Statutes, relating to murder.

2. By indictment on March 29, 1973, Petitioner was charged with second degree murder in the Supreme Court, Bronx County, New York. Petitioner subsequently pled guilty to the offense of manslaughter, and, on October 26, 1973, she was sentenced to an indeterminate sentence not to exceed four years.

3. A model prisoner, Petitioner served 14 months of her sentence and was paroled. She reported regularly thereafter to her parole officer until the conclusion of her four year sentence.

4. Facts of the incident leading to the charge against Petitioner and her subsequent sentence were established at the final hearing by the candid and direct testimony of Petitioner. A female in a relationship with Petitioner's brother attacked the Petitioner who resorted to use of a handgun, killing her attacker. Petitioner had earlier sought and received a restraining order against the individual which "worked for a year" before the individual sought again to confront Petitioner.

5. Petitioner, now a grandmother, testified tearfully to her errant behavior at the age of 21, over 24 years ago in New York. Petitioner has never been charged with any legal violation since that time, with the exception of traffic tickets.

6. Petitioner, a high school graduate, was also schooled and certified as a nurse technician in New York in 1980. She moved to Florida in the late 1980's and was certified in Florida in 1989 as a nursing assistant. She was certified as a home health aide in 1990 in the State of Florida.

7. Petitioner is a devout member of her church, attending services several times each week. Her adult children regularly employ her services to care for their children. She has six grandchildren, as well as an eight year old of her own. She also cares for two retired individuals.

8. Prior to Respondent's determination of her disqualification, Petitioner provided child care services out of her home. Arlene Marcellus is the mother of one of those children. Marcellus testified at the final hearing that she has known the Petitioner for more than a year. Petitioner provided care for Marcellus' three year old daughter on a regular basis, eight hours per day, for approximately three months prior to Respondent's determination. Marcellus was well pleased with Petitioner's services and had planned that Petitioner would care for Marcellus' unborn twins. Unfortunately the twins were stillborn.

9. Petitioner desires to continue her work in the area of child care. Since the licensure process required that Petitioner undergo background screening, Respondent made its initial determination to deny exemption. Respondent's representative at the final hearing in this cause testified that facts concerning Petitioner, as presented at this hearing, could have resulted in a different initial determination by Respondent if presented to Respondent prior to that determination.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over this matter. Section 120.57(1), Florida Statutes.

11. Since Petitioner's potential licensure and employment in the child care industry results in her denomination as an

A-3.7

individual in a position of special trust or responsibility, background screening was required. The basis for screening Petitioner to determine her "[g]ood moral character" is found in Section 402.305(2)(a), Florida Statutes.

12. As established by the evidence presented, the offense which allegedly disqualifies Petitioner took place prior to October 1, 1995. Such date is prior to the beginning date for which the current provisions of Section 435.04(2), Florida Statutes, as enacted by Chapter 95-228, Section 64, Laws of Florida, may be applied. Accordingly, minimum standards applicable to personnel to be employed in delivering services to children contained in the current screening provisions set forth in Section 435.04(2), Florida Statutes, are not applicable. Thus, the preceding law for screening personnel must be applied.

13. Section 402.305(2)(a)1. and 2., Florida Statutes (1994 Supp.), disqualifies a person from providing services in the instance where the individual has committed any violation of Section 782.04, Florida Statutes, relating to murder; or Section 782.07, Florida Statutes, relating to manslaughter.

14. In view of the evidence presented in this matter, Petitioner is disqualified for licensure by Section 402.305(2)(a)1. and 2., Florida Statutes (1994 Supp.), absent her qualification for exemption.

15. In accordance with Section 402.305(2)(c)1.a., Florida Statutes (1994 Supp.), Petitioner may obtain an exemption from

disqualification if she complies with Section 402.305(2)(c)2., Florida Statutes (1994 Supp.), which states:

In order to grant an exemption to a person, the department must have clear and convincing evidence to support a reasonable belief that the person is of good character so as to justify an exemption. The person shall bear the burden of setting forth sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding the incident, the time period that has elapsed since the incident, the nature of the harm occasioned to the victim, and the history of the person since the incident, or such other circumstances that shall by the aforementioned standards indicate that the person will not present a danger to the safety or well-being of children. The decision of the department regarding an exemption may be contested through the hearing procedures set forth in chapter 120.

16. Petitioner bears the burden of proof in this proceeding. Fla. DOT v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA, 1981).

17. In the instant case, the proof establishes that an aggressor died as the result of an altercation with Petitioner, who had sought legal recourse earlier to prevent future confrontation; that the disqualifying incident occurred 24 years ago; that even though harm to the aggressor was egregious and resulted in death, there is no evidence to indicate that Petitioner intentionally sought the aggressor's death; and that since the incident, Petitioner has paid her debt to society, obtained further education, and lived an exemplary life, inclusive of commitment to church and family.

18. Petitioner has provided clear and convincing evidence to support a reasonable belief that she is of good character so as to justify an exemption from disqualification for licensure in a position of special trust and responsibility.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is recommended that a Final Order be entered granting Petitioner an exemption from disqualification.

DONE and ENTERED this 10th day of September, 1996, in Tallahassee, Leon County, Florida.



DON W. DAVIS, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675 SunCom 278-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of September, 1996.

COPIES FURNISHED:

Marc Taps, Esquire
Legal Services of North Florida
2119 Delta Boulevard
Tallahassee, Florida 32303

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District 2 Legal Office
Department of Health and
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Tallahassee, Florida 32399-2949

Veronica Lee Harris
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Tallahassee, Florida 32304

Gregory D. Venz, Agency Clerk
Department of Health and
Rehabilitative Services
Building 7, Suite 204-X
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

Richard Doran, Esquire
Department of Health and
Rehabilitative Services
Building 7, Suite 204
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

A-3.11

JO1832

DATE: 11-25-97

TIME: 11:08:31

CLERK'S COPY

WORKSHEET - VOP

ARRAIGNMENT

INFORMATION

DATE: 12-02-97

JUDGE: 22

STATE VS WYNN

VERONICA

CASE: C 93 10870 A

SPN: 99881

PATTY:

DATTY:

RPTR: L

LEV CNT

CHARGE LITERAL

R.O.R.

BOND

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BATTERY/VOP

TEPR on both counts

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PUBLIC DEFENDER APPOINTED

PLEAD NOT GUILTY

WRITTEN PLEA NOT GUILTY

JAILED COUNSEL

BOND ESTREATED

WITHDRAW CAPIAS

RESERVE RIGHT TO FILE MOTIONS

RE-SUMMONS

CAPIAS ORDERED (

TEXT

NOTICE (A/D)

ADMITTED VOP ALLEGATIONS

DENIED VOP ALLEGATIONS

VOP HEARING DATE

VOP SENTENCING DATE

ESTREATURE SET ASIDE

CASE MAN. CONF. SET FOR

(J/N) TRIAL SET FOR

DEFENDANT PLEAD

CONDITIONS

***** PLEA *****

LEV CNT

G/N

STATUTE

ROR

BOND

M

1 BATTERY/VOP

- 784 03

RECEIVED

MAR 07 2000

BACKGROUND SCREENING

STATE OF FLORIDA, COUNTY OF LEON

I HEREBY CERTIFY that the above and foregoing
is a true and correct copy of an instrument filed in the
public records of Leon County, Florida.WITNESS my hand and seal of office this 6 day
of March, 2000

DAVE LANG

Clerk of County Court



PLEA ACCEPTED

PST JAILED

SET ASIDE BOND EST

SENT DATE SET

TRIAL SET (J/N)

WITHDRAW CAPIAS

NO INFORMATION ON COUNTS

STATE NOLLE PROSSED COUNTS

PST JAILED

EST

FOR ORDERED

PLEA HEAR RESET

DEFENDANT PLEAD

CNT

DEG

NCIC

GOC

CNT	A	A	Y	D.O.C.	CNTY	COMM	JAIL	CONC/CONS/COTE/INCL
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SENTENCED STAYED UNTIL

PASSED UNTIL

CLERK

ENTERED BY

A-3.12

SECOND JUDICIAL CIRCUIT ARREST/NOTICE TO APPEAR/PROBABLE CAUSE AFFIDAVIT

☒ Arrest ☐ Notice To Appear	☒ Adult ☐ Juvenile	Date and Time Occurred 7-21-96 4:27	SPN# 99881	OBTS# 0006527639	Court Case # 29602509A
Location of Incident 3200 BLVD OF NEVOMA LN		Business Name/Apt. Complex N/A		Patrol Zone 8A	Agency Report Number 96-25281
Defendant's Name: Last, First, Middle WYNN, VERONICA LEE		DOB 9-14-49	Skin med	Sex F	Race B
Alias FL. D.L. NAME		Driver's License/ID#/State 4625-872-49-839	SSN 264 94 0117	Ht 506	Wt 202
Local Address (Street, City)		Zip Code	Telephone H: W:	Place of Birth TAH. FL.	

Permanent Address (Street, City, State, Zip Code) 1229 ELBERTA DR TAH. FL. 32204		Telephone 575-0988
Scars, Tattoos, Unique Physical Features		Occupation/Employer/School CHILD CARE

Codefendant's Name (Last, First, Middle)	DOB	Sex	Race	In Custody Yes () No () Felony () Misd. ()
Codefendant's Name (Last, First, Middle)	DOB	Sex	Race	In Custody Yes () No () Felony () Misd. ()

Charge Description #1 DOMESTIC AGG. ASSAULT	Counts 1	☒ Felony ☐ Misdemeanor	☐ Warrant ☐ Capias	☐ Ordinance ☐ Citation	Statute/Ordinance # 784.02
Charge Description #2 DWLSR	Counts 1	☐ Felony ☒ Misdemeanor	☐ Warrant ☐ Capias	☐ Ordinance ☐ Citation	Statute/Ordinance # 322.34
Charge Description #3	Counts	☐ Felony ☐ Misdemeanor	☐ Warrant ☐ Capias	☐ Ordinance ☐ Citation	Statute/Ordinance #
Charge Description #4	Counts	☐ Felony ☐ Misdemeanor	☐ Warrant ☐ Capias	☐ Ordinance ☐ Citation	Statute/Ordinance #
Charge Description #5	Counts	☐ Felony ☐ Misdemeanor	☐ Warrant ☐ Capias	☐ Ordinance ☐ Citation	Statute/Ordinance #

Parent/Legal Custodian/Other Name DAVE LANG		Address, City, State, Zip		Phone: H: W:
Race	Sex	DOB	Driver's License/ID#/State	SSN
Released To		Relationship	Child Include?	Date

MANDATORY COURT APPEARANCE

I UNDERSTAND THAT FAILURE TO COMPLY WITH THIS NOTICE TO APPEAR WILL CONSTITUTE A SEPARATE OFFENSE.

Location	Address	Courtroom #	Date and Time
Signature of Defendant/Juvenile		Signature of Parent/Legal Custodian	

Affiant Signature E. Forsberg	Printed Name/ID# E. Forsberg TPD 709	Agency Name/# TALLAHASSEE P.D./FL0370300
---	--	--

COPIES TO: White - Court/HRS Canary - State Attorney Pink - Agency Goldenrod - Detention Facility Green - Defendant

Defendant Name <u>WYNN, VERONICA L.</u>		Race <u>B</u>	Sex <u>F</u>	DOB <u>9-19-49</u>	Agency Report Number <u>96-25281</u>
Charge # <u>1</u>	Victim's Name <u>FIELD, FRANK</u>	Residence Address <u>2741 W. THARPE</u>		Residence Phone <u>NONE</u>	Business Phone
Charge # <u>2</u>	Victim's Name <u>STATE OF FLORIDA</u>	Residence Address		Residence Phone	Business Phone
Charge #	Victim's Name	Residence Address		Residence Phone	Business Phone

The undersigned certifies and swears that he/she has just and reasonable grounds to believe, and does believe that the above named Defendant on the 21 day of JULY, 1996, at approximately 427 am/pm at 3200 BIK OF NEKOMA LN. did commit the following violation of law:

THE DEFENDANT (A) WAS FOLLOWING BEHIND THE VICTIM IN HER VEHICLE ON BLOUNTSTOWN STREET WHEN THE VICTIM PULLED OVER ON NEKOMA LANE. THE A PULLED UP BEHIND AND THEN WALKED UP TO THE VICTIM'S VEHICLE. THE VICTIM THEN EXITED HIS VEHICLE. THE A GOT UPSET BECAUSE THERE WAS A FEMALE WITH THE VICTIM. THE A THEN ATTACKED THE VICTIM WITH A SCREWDRIVER. THE VICTIM FOUGHT BACK. THE A BIT THE VICTIM'S WAIST. THE TWO SEPARATED AND THE A WENT INSIDE THE VICTIM'S VEHICLE. THE A TOOK THE VICTIM'S PORTABLE PHONE AND THREW IT ON THE GROUND. THE A THEN TRIED TO PUNCTURE THE SEATS WITH THE SCREWDRIVER. THE A THEN PICKED UP A DRINKING GLASS FROM THE VICTIM'S VEHICLE AND SMASHED IT ON THE GROUND. THE A THEN PICKED UP A PIECE OF GLASS AND THEN TRIED TO CUT THE VICTIM. THE VICTIM THEN RAN TO THE SIDE OF A NEARBY HOUSE AND PICKED UP A STICK. THE A THEN WENT BACK TO THE VICTIM'S VEHICLE AND TRIED TO BREAK OUT A WINDOW WITH THE SCREWDRIVER. THE A THEN ENTERED HER VEHICLE PULLED FORWARD INTO THE REAR END OF THE VICTIM'S VEHICLE. THE A THEN LEFT. THIS OFFICER PULLED UP ON SCENE DOWN THE ROAD (BLOUNTSTOWN ST) WHERE THE A WAS PULLED OVER TALKING TO A FEMALE.

THE A + VICTIM HAD BEEN LIVING TOGETHER FOR 4 YEARS. THE VICTIM HAD JUST MOVED OUT.

THE A IS PREGNANT BY VICTIM.

A HAS A SUSPENDED D.L. FOR FTA + FTP.

Affiant Signature <u>E. Forsberg</u>	Printed Name/ID# <u>E. FORSBERG 709</u>	Agency Name/ID# <u>Tallahassee P.D. #FL0370300</u>
---	--	---

Sworn to and subscribed before me this 21 day of July, 1996

Certifying Officer
[Signature]

Detention Facility <u>96-7205</u>	Arrest Date	Time <u>5:00 p.m.</u>
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Amount of Bond <u>0</u>	Aggravating Factors
Booking Officer <u>A. Rowe 678</u>	Bond Out (Month/Day/Year) Time (a.m.) By: (p.m.)

IN THE COUNTY COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

Case No: C96-10870 am

STATE OF FLORIDA

v.

VERONICA L. WYNN,

Spn. 99881

Defendant AKA Veronica L. Harris

DAVE LANG
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

AUG 28 4 38 PM '96

RECORDED IN THE PUBLIC
RECORDS OF LEON COUNTY, FLORIDA

1476788

PLEA AND ACKNOWLEDGMENT OF RIGHTS

I hereby enters an plea of no contest to the following criminal offense(s),

Count 1: Offense: BATTERY + DWLSR Max Penalty: 1Yr.

My plea is entered with the understanding that the state has agreed to the following disposition of my case:

Adjudication of guilt. Twelve months probation with the following conditions, no contact with Frank Fields, \$155.00 court costs and \$100.00 fine. Probation may be terminated after nine months if all conditions completed and defendant relocates out of state. *both* *cts Concurrent*

(1) I understand that the judge will place me under oath to question me about this plea. I must answer the judge's questions truthfully, and if I make a false statement while under oath I could be prosecuted for perjury.

(2) I understand that a plea of no contest means that I will not challenge the evidence against me. I also understand that if the judge accepts this plea of no contest, there will be no trial and that I will be sentenced based on my plea.

(3) I understand the nature of the charges to which I am pleading and I am aware of the maximum and minimum penalties. My lawyer has informed me of the facts the State would have to prove before I could be found guilty, and discussed with me any possible defenses that could be raised in my case. I am satisfied with my lawyer's advice.

STATE OF FLORIDA, COUNTY OF LEON
I HEREBY CERTIFY that the above is a true and correct copy of an Instrument filed in the Public Records of Leon County, Florida.
WITNESS my hand and seal of office this 28th day of August, 1996.
DAVE LANG
Clerk of County Court



TAB 4

TRANSCRIPT OF FINAL HEARING OF
SEPTEMBER 15, 2000

1.	Pages 24-25	4.24
2.	Pages 27-36	4.28
3.	Pages 55-57	4.55
4.	Page 59	4.59
5.	Page 69	4.69
6.	Pages 71-105	4.71
7.	Pages 115-118	4.115
8.	Pages 120-121	4.120
9.	Page 126	4.126
10.	Page 139	4.139

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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VERONICA HARRIS,

Petitioner,

vs.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Respondent.
-----)

Case No. 00-2824

VOLUME 1 of 1

PROCEEDINGS: FINAL HEARING

BEFORE: ELLA JANE P. DAVIS
Administrative Law Judge

DATE: September 15, 2000

TIME: Commenced at 10:30 a.m.
Concluded at 2:15 p.m.

PLACE: Division of Administrative Hearings
Hearing Room 4
DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida

REPORTED BY: KRISTEN L. BENTLEY
Court Reporter

1 a, I guess, what was at that time a 24-year-old
2 manslaughter conviction.

3 What Ms. Harris did not reveal at this particular
4 hearing and which I think certainly would have made a
5 difference to the Administrative Law Judge and to the
6 Department had it been known at that time, was less than
7 two months prior to the hearing Ms. Harris had been
8 involved in the incident which gives rise to this
9 proceeding in which Ms. Harris physically attacked her
10 paramour, Mr. Frank Fields, in a situation that not only
11 endangered herself and Mr. Fields but also showed a
12 disregard to the six children who happened to be in the
13 back seat of her car when she pulled Mr. Fields off the
14 road.

15 Six children, which the evidence will show, were young
16 children. Their exact ages unknown since the police
17 officers did not get that. However, the six children were
18 all in the back seat of a sedan-type car without any car
19 seats and without sufficient seat belts being in the back
20 to restrain them. I do not believe that these facts will
21 establish the kind of clear and convincing evidence of
22 rehabilitation and of -- or of evidence that Ms. Harris
23 will not be a threat to the children in her care.

24 Consequently, the Department's position as a matter of
25 law and of fact is that this exemption should be denied.

1 THE COURT: Okay. Folks, we're not going to
2 re-litigate the earlier exemption case that is final. To
3 the degree that may have some bearing on MO, we'll see
4 where this goes. I do not know whose witnesses are out
5 there signaling, but somebody has been looking through the
6 door about four times. Mr. Perry, do you want to see if
7 that's your witness that has arrived?

8 MR. PERRY: Thank you, Your Honor. (Pause.) Your
9 Honor, the lady in question is Christiane Le Clair who is
10 the district screening coordinator for the Department of
11 Children and Families, District 2, and she's going to be my
12 Agency representative.

13 THE COURT: As Agency representative she's entitled to
14 stay despite the rule.

15 MR. PERRY: Thank you.

16 THE COURT: Folks, do you think that we might be able
17 to limit the proof if you-all can stipulate that the
18 alleged victim, or I guess Mr. Fields, is not a minor?

19 MR. PERRY: He's not a minor.

20 THE COURT: Was not a minor at the appropriate time.

21 MR. PERRY: That's correct, Your Honor.

22 MS. GOIN: That's correct.

23 THE COURT: Very well. Are we ready to proceed?

24 MS. GOIN: I'd like to call Ms. Veronica Harris as my
25 first witness.

1 A. I had to attend school for six months and upon
2 completion I graduated.

3 Q. What made you decide to go into family home day care?

4 A. Well, my oldest daughter and her husband had two
5 children and they needed child care so my son-in-law said to me,
6 Mom, why don't you open a day care and this way you'll be able
7 to keep the children and be there for Talisha, which is my
8 12-year-old daughter now.

9 Q. How long have you been a child care provider?

10 A. I've been a provider for five years.

11 Q. And prior to that, what was your employment?

12 A. Nursing assistant.

13 Q. When did you first apply to be a family home day care
14 provider?

15 A. I think it was March of '95.

16 Q. And could you explain the application process that you
17 went through to get licensed?

18 A. Well, we had to complete a 30-hour course, attend a
19 CPR, first aid class, and filled out the necessary application
20 and pay a \$40 fee.

21 Q. And when you applied in 1995, did you have to sign an
22 affidavit of good moral character?

23 A. Yes.

24 MS. GOIN: Mr. Perry, I've already given you these
25 before when we exchanged exhibits.

1 MR. PERRY: No objection.

2 MS. GOIN: Could I have this marked as Petitioner's
3 Exhibit 1?

4 THE COURT: Petitioner's 1 for identification, a 4/20
5 affidavit.

6 (Petitioner's Exhibit No. 1 marked for
7 identification.)

8 BY MS. GOIN:

9 Q. Is this the affidavit that you signed in 1995?

10 A. Yes.

11 MS. GOIN: I'd like to have this admitted as
12 Petitioner's Exhibit 1.

13 MR. PERRY: Without objection, Your Honor.

14 THE COURT: Without objection, it is admitted.

15 (Petitioner's Exhibit No. 1 received in evidence.)

16 BY MS. GOIN:

17 Q. Have you had to sign any other affidavits of good
18 moral character?

19 A. Yes, we had -- I had a five-year screening which was
20 back in I think it was January of 2000.

21 MS. GOIN: Could we mark this as Petitioner's
22 Exhibit 2?

23 THE COURT: Petitioner's 2, 2000 affidavit.

24 (Petitioner's Exhibit No. 2 marked for
25 identification.)

1 BY MS. GOIN:

2 Q. Ms. Harris, is this the affidavit of good moral
3 character that you signed in 2000?

4 A. Yes.

5 MS. GOIN: I'd like this admitted as Petitioner's
6 No. 2.

7 MR. PERRY: Without objection.

8 THE COURT: Without objection, it is admitted.

9 (Petitioner's Exhibit No. 2 received in evidence.)

10 THE COURT: Let me take this opportunity to instruct
11 the court reporter that if a transcript is ordered, I would
12 appreciate it if you would indicate the exhibit number in
13 one column and the point at which it is marked for
14 identification in a second column and the place at which it
15 is admitted if it is admitted in a third column. That
16 makes it easier for these folks to do their proposed
17 recommended orders when the time comes.

18 BY MS. GOIN:

19 Q. Other than the good moral character affidavit that you
20 signed in '95 and the one in 2000, were you asked to sign any
21 other good moral character affidavits?

22 A. No.

23 Q. In 1996 you had an altercation with Frank Fields; is
24 that correct?

25 A. Yes.

1 Q. And could you tell us who is Frank Fields?

2 A. He was an ex-boyfriend of mine.

3 Q. And did he live with you?

4 A. No, he did not.

5 Q. Where did he live?

6 A. Between his sister and his mom.

7 Q. Did he ever stay at your house? Spend the night at
8 your house?

9 A. Maybe once or twice out of the week.

10 Q. And did he keep any of his personal belongings in your
11 house?

12 A. One or two CDs and maybe a change of underwear.

13 Q. And where did he keep his personal belongings?

14 A. At his sister's.

15 Q. Did he contribute to any household expenses?

16 A. No.

17 Q. Did you have any joint checking or savings accounts
18 together?

19 A. No.

20 Q. Could you explain to us what happened on July of 1996
21 between you and Mr. Fields?

22 A. My daughter and I and four of my grandchildren were
23 driving down -- I had just gone to pick her up because she had
24 called me because her car was out of commission and I had gone
25 to pick her up from the store. And as I was going down

1 Tennessee Street, I saw Mr. Fields and a female in the car with
2 him and they turned down Bountstown Highway and I went behind
3 him. So he pulled over to the side of the road and I did the
4 same thing.

5 And when I pulled up behind him, I bumped the back of
6 his car and he got out. So the two of us started to argue and I
7 asked him who was the woman in the car and we started hitting
8 back and forth, he hitting me and me hitting him. And we had a
9 fight and we got some scratches. He got scratches and I did
10 too. And then he went over to pick up a stick and then I kind
11 of backed away because I didn't know if he was going to hit me
12 with it.

13 And my daughter started to get into the middle of us
14 because -- before he got the stick, she got into the middle of
15 us and we were hitting back and forth and she was trying to stop
16 us. And then he ran over to get the stick. And at that time, I
17 drove around the corner because the woman that was in the car
18 with him, she went around the corner. So I went around the
19 corner to ask her, you know, was Frank in her life and she told
20 me that they were just friends and she was helping him to move.

21 MR. PERRY: Objection. Hearsay, Your Honor.

22 THE COURT: Sustained.

23 MS. GOIN: Fine.

24 BY MS. GOIN:

25 Q. Go ahead. So you were having a conversation with the

1 lady that was in the car with Mr. Fields?

2 A. Yes.

3 Q. And then what happened?

4 A. And then I grabbed his cell phone and threw it on the
5 ground.

6 Q. Was that after you had already talked to the --

7 A. No, that was before I talked to the lady.

8 Q. Okay. And what was it about the situation that made
9 you get into a physical altercation with him?

10 A. Because at the time I was pregnant and Frank didn't
11 really contribute towards the household and he -- I had found
12 out that weekend when I called over to his sister's house that
13 he was moving his things from her house to his apartment. And
14 like I said, I was pregnant and I just -- I didn't know what --

15 Q. You said -- okay.

16 A. I just didn't feel like, you know, with him moving his
17 stuff from his sister's house and not being able to help me and
18 knowing I was pregnant I just felt I was being treated unfairly
19 and I was angry with him.

20 Q. Okay. Now you said you were pregnant at the time?

21 A. Yes.

22 Q. How far along were you?

23 A. I was two months.

24 Q. And who was the father of the child?

25 A. He was.

1 Q. And did you ever give birth to the baby?

2 A. No.

3 Q. What happened?

4 A. I lost it.

5 Q. Now were there any children in the car with you at the
6 time of the incident?

7 A. Yes, my daughter. And at the time she was eight. My
8 grandson was seven. And my twin granddaughters were five.

9 Q. So how many children total were in the car with you?

10 A. Four.

11 Q. Why were they all in the car with you?

12 A. Because I had gone to pick my daughter up from the
13 store. Like I said, her car was out of commission and she had
14 called me to come and get her.

15 Q. And were any of these children required to be in car
16 seats?

17 A. No.

18 Q. Do you ever transport children in your day care?

19 A. Yes.

20 Q. And do you have enough seats in your car for each of
21 them to have a car seat?

22 A. Yes.

23 MR. PERRY: Objection. An improper predicate has been
24 laid for that question. We don't know how many children
25 she's been transporting in those cars.

1 THE COURT: Overruled.

2 BY MS. GOIN:

3 Q. Now were you arrested for this incident between you
4 and Mr. Fields?

5 A. Yes.

6 Q. And what did the State Attorney's Office charge you
7 with?

8 A. Battery and driving with a suspended license.

9 MS. GOIN: I'd like this marked as Petitioner's
10 Exhibit 3.

11 THE COURT: Petitioner's 3 for identification. What
12 may I call this?

13 MS. GOIN: The information.

14 THE COURT: Information.

15 BY MS. GOIN:

16 Q. Ms. Harris, could you identify this document, please?

17 A. I guess this is what I was charged with.

18 THE COURT: Ma'am, I know this is difficult, but you
19 need to speak up.

20 MS. GOIN: I'd like this introduced as Petitioner's
21 Exhibit 3 and admitted into evidence.

22 MR. PERRY: No objection.

23 THE COURT: It is admitted.

24 (Petitioner's Exhibit No. 3 received in evidence.)

25 MS. GOIN: And mark this as Exhibit 4, please.

1 THE COURT: Petitioner's plea and acknowledgement of
2 rights?

3 MR. PERRY: Is this Petitioner's 4 or 3?

4 MS. GOIN: Oh, I'm sorry, yours has both of them
5 attached. So that would be 4.

6 MR. PERRY: Okay.

7 BY MS. GOIN:

8 Q. And is this the plea agreement that you signed,
9 Ms. Harris?

10 A. Yes.

11 MS. GOIN: I'd like this admitted as Petitioner's 4.

12 MR. PERRY: No objection.

13 THE COURT: I think it's cumulative, but we'll let it
14 slide and it is admitted.

15 (Petitioner's Exhibit No. 4 received in evidence.)

16 MS. GOIN: Thank you.

17 BY MS. GOIN:

18 Q. Now did you enter a plea to battery and driving with a
19 suspended license?

20 A. Yes.

21 Q. And what was your plea? Did you plead guilty or no
22 contest?

23 A. No contest.

24 Q. Now what were the terms of your probation?

25 A. That I have no contact with Mr. Fields, pay court

1 costs and be on probation for, I think it was one year.

2 Q. Were you required to attend a batterer's intervention
3 program?

4 A. No.

5 Q. Did you complete your probation?

6 A. Yes, I did.

7 Q. And when did you complete that?

8 A. December of '97.

9 Q. Now after the incident with Mr. Fields occurred, did
10 you notify the Department of Children and Families?

11 A. No.

12 Q. Did you mention the incident with Mr. Fields at the
13 final hearing held on your first exemption request?

14 A. No.

15 Q. And why did you not do that?

16 A. Because that was a part of my personal life and I just
17 felt it had nothing to do with the care I provide for the
18 children.

19 Q. How do you feel about the incident between you and
20 Mr. Fields?

21 A. I'm sorry for what I had done. If I had only been
22 thinking, I would have redirected myself and not allowed myself
23 to get into that predicament.

24 Q. And what did you learn from the incident?

25 A. That I should have not been -- allowed my mind to be

1 Q. Okay. Now does that appear to be a similar document
2 to the one you were just talking about?

3 A. Yes.

4 Q. Okay. Under the handwritten words on Petitioner's
5 Exhibit 2, the handwritten words, Harris Child Care Home. Would
6 you read that paragraph immediately following those handwritten
7 words?

8 A. By signing this form, I am swearing that I have not
9 been found guilty or entered a plea of guilty or nolo
10 contendere, no contest, regarding the adjudication of any of the
11 following charges under the provision of the Florida Statutes.

12 Q. Thank you. Now down here where I'm pointing under the
13 column of numbers on Petitioner's Exhibit 2 where it says,
14 number 784.03 -- I'm sorry, 741.30. Do you remember -- that
15 says, Domestic violence, right?

16 A. Uh-huh.

17 Q. And you did not consider what happened in July of 1996
18 to be domestic violence?

19 A. No.

20 Q. Never crossed your mind?

21 A. No.

22 Q. Now, getting back to that particular incident. You
23 pled guilty to that offense on August 28th of 1996; is that
24 correct?

25 A. I pled guilty to simple battery and driving with a

1 suspended license.

2 Q. Okay. You pled guilty to -- I'm sorry. You pled no
3 contest to battery on August 28th of 1996; is that correct?

4 A. Yes.

5 Q. And the administrative hearing that you had in this
6 building regarding the first exemption that you requested and
7 were ultimately granted, that occurred on September 9th of 1996;
8 did it not?

9 A. Right.

10 Q. So between the time that you entered your plea of no
11 contest of battery and the time of the hearing, approximately 11
12 days had passed; is that correct?

13 A. I'm not sure -- repeat that, please.

14 Q. I'll withdraw the question, Ms. Harris. Now tell me
15 again why it is that you did not mention the fact that you pled
16 no contest to a battery that you were involved in a physical
17 altercation in the presence of your children and grandchildren
18 two months -- or less than two months prior to the hearing.
19 Tell me again why you did not mention that at the hearing.

20 A. The incident for 1996?

21 Q. Correct.

22 A. As I said, that was a part of my personal life and it
23 had nothing to do with my family day care home.

24 Q. Well wasn't the manslaughter conviction that you were
25 asking for an exemption from, wasn't that also a part of your

1 personal life?

2 A. Not like this incident.

3 Q. How is it different?

4 A. I was not out there -- the incident that happened in
5 New York had nothing to do with another man.

6 Q. I'm sorry, could you explain to me the distinction
7 again? I'm not quite understanding it.

8 A. It was two totally different incidents. I mean, how
9 could you compare what happened in 1973 in comparison to 1996?

10 Q. Let me rephrase the question another way, Ms. Harris.
11 Are you telling me that it did not occur to you at any point
12 during the hearing on September 9th, 1996 or prior to the
13 hearing on September 9th, 1996 that a person who was determining
14 whether you are fit to be entrusted with the care of children,
15 that it would never occur to that person that it might be
16 relevant to know whether you had been involved in a fistfight
17 with your boyfriend by the side of the road while your children
18 and grandchildren were in the car nearby? Are you telling me
19 that it never occurred to you that that might be relevant to
20 that issue?

21 A. But, Mr. Perry, that had nothing to do with my day
22 care children. I mean, I'm still -- I still provide the love
23 that's needed for those day care children that I've always done
24 for the last five years.

25 Q. Then let me ask you another question, Ms. Harris. If

1 repercussion --

2 MS. GOIN: Objection. That was not her testimony.

3 MR. PERRY: I believe it was, Your Honor.

4 THE COURT: Mr. Perry, don't tell her what you think.
5 Ask her a question.

6 BY MR. PERRY:

7 Q. Okay. Since I do not -- since I still do not
8 understand what your motivations were, Ms. Harris, let me ask
9 again.

10 Why would you not have done what you did on July 26th,
11 1996 if it had been your day care children in the back seat
12 rather than your children and grandchildren?

13 A. I'm not sure.

14 MR. PERRY: No further questions, Your Honor.

15 THE COURT: Redirect?

16 MS. GOIN: Yes.

17 REDIRECT EXAMINATION

18 BY MS. GOIN:

19 Q. Ms. Harris, could you tell us a little bit more about
20 the number of times that Frank Fields stayed at your house? You
21 said it was an average, one to two. But over a period of time,
22 you said that fluctuated. Could you explain a little bit more
23 about that?

24 A. As I said, Mr. Fields stayed at my house. Some nights
25 it would be one night a week. Sometimes it would be two to

1 A. Yes.

2 Q. And did they live together?

3 A. No.

4 Q. Where did Mr. Fields live?

5 A. With his sister on Country Club Drive. And his mom
6 was staying on Joe Luis at the time. He was between the two.

7 Q. And how often would he be at your mother's house?

8 A. About -- no more than two nights that I could recall.

9 Q. Two nights a week, a month?

10 A. Maybe a week.

11 Q. A couple nights a week?

12 A. Yeah.

13 Q. Did you ever notice any of his personal belongings at
14 her house?

15 A. No.

16 Q. Would you consider that they were living together as a
17 family?

18 A. No.

19 MS. GOIN: I have nothing further.

20 MR. PERRY: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. PERRY:

23 Q. Ms. Harris, I just want to clarify two points with
24 you. You said that one of the children in the car was your son
25 who was -- I think is now 11 but was 8?

1 Ms. Harris?

2 A. Since she's been -- since I've known her to be caring
3 for the children.

4 Q. When did you first know her to be caring for the
5 children?

6 A. I knew she had a day care at least this last year. I
7 knew she had a day care in her home.

8 Q. Okay. So for a year you've had that feeling about
9 her?

10 A. Yes.

11 Q. Did you have any other different feelings about her
12 prior to that year?

13 A. No.

14 Q. Okay. Did you feel that way about her when you first
15 got to know her in 1996?

16 A. She didn't have a day care as far as I knew. I had no
17 negative feelings about her. I had nothing -- no association to
18 make with that. She was a family -- her daughter -- I still
19 felt she was a loving mother toward her daughter.

20 Q. Did you have any feelings that she might get involved
21 in violent acts in 1996 when you knew her?

22 A. No.

23 MR. PERRY: That's all I have, Your Honor.

24 THE COURT: Redirect?

25 MS. GOIN: No. Nothing further.

1 THE COURT: Do you want the witness to wait?

2 MS. GOIN: No. You're excused. Thank you.

3 THE COURT: Ma'am, you're excused but don't discuss
4 the case until you hear it's completed.

5 MS. GOIN: My next witness will be Cicely Brantley.

6 Whereupon,

7 CICELY BRANTLEY

8 was called as a witness, and having been previously duly sworn
9 by the Court, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. GOIN:

12 Q. Ms. Brantley, could you state your name and address
13 for the record?

14 A. My name is Cicely Walker Brantley. I live at 2061B
15 Watson Way, Tallahassee, Florida 32302 -- 08, I'm sorry.

16 THE COURT: Ms. Brantley was sworn this morning and
17 she remains under oath for the duration of the proceedings.

18 BY MS. GOIN:

19 Q. Where is your place of employment?

20 A. I'm employed with Leon County School Board. I work at
21 Bond Elementary School.

22 Q. And what is your position there?

23 A. Elementary music teacher.

24 Q. And how do you know Ms. Harris?

25 A. She's my children's day care provider.

1 Q. And how long have you known her?

2 A. Since October of '98.

3 Q. And how many children do you have?

4 A. Two.

5 Q. And what are their ages?

6 A. My son, Delcary, is 2. He'll be 3 in January. My
7 daughter is 15 months.

8 Q. And how long has she kept your children?

9 A. She began keeping my son October 13th if I'm not
10 mistaken, of '98. He was 9 months old. My daughter started
11 going to Ms. Harris in August of '99. She was 8 weeks old.

12 Q. And how do you feel about Ms. Harris as a child care
13 provider?

14 A. I have the utmost confidence in her abilities as a
15 child care provider. After myself and my husband, she is the
16 person I would look to to care for my children. I know, and
17 I've told her this on many occasions, I know that she does more
18 than just takes care for them out of a job responsibility. She
19 cares for my children. She loves my children.

20 When they are sick, she checks on my children. She
21 goes above and beyond the call of duty as a day care provider
22 many, many times over. I recommend her to everyone I know who
23 needs day care. Confidence doesn't even cover it. I just -- I
24 wouldn't want anybody else to care for my children while they
25 are an age to be in day care. She's my first choice and I feel

1 no hesitation at all when I leave my children in her care.

2 Q. Okay. What is it about her that you think makes her a
3 good day care provider?

4 A. Well, I've seen her in dealing with the children.
5 It's very evident that she enjoys working with children, that
6 she loves the kids. I've seen children, even recently, I saw a
7 little boy who in my presence was very unruly, extremely unruly.
8 I'm not sure of his mother, but I know I have problems trying to
9 get him to behave. And when he went to her, she has a way with
10 children that they take to her. My children call her the same
11 thing her grandchildren call her.

12 Q. What is that?

13 A. Mama Ronnie. Mama Ronnie. I feel comfortable with
14 Ms. Harris. She's like a mother to me. When I'm in her home I
15 feel at peace there. I feel love there. I feel as comfortable
16 there as I do in my own mother's home, in my own home. And
17 that's the kind of environment I want for my children. And I
18 would think it's the kind of environment most people want their
19 children in where they feel at home. I've seen her deal with
20 the kids when things are kind of unruly.

21 I've never heard her raise her voice at the children.
22 She always deals with them in a way, it's always a positive
23 response. She positive redirects them or whatever the case may
24 be. I've never seen her do anything that I found questionable.
25 As a matter of fact, she's given me encouragement in being a

1 mother.

2 Q. Has she ever taken care of your children outside of
3 the regular day care hours?

4 A. Yes, several -- at least three times. I go on trips
5 with my church and she kept my daughter three days. She
6 voluntarily -- I did not pay her to do this. I didn't even ask
7 her. She voluntarily -- she came to me and asked did I have
8 care for my daughter while I was gone. I do have a husband but
9 I just thought it would be a bit much for him to keep both my
10 children. They were -- at the time they were 1 and -- my son
11 was -- no, my son had just turned 2 and my daughter was like
12 eight months.

13 She voluntarily kept Iana from Wednesday night through
14 Friday if I'm not mistaken, overnight. And I had no doubt that
15 Iana was cared for the same way I would have cared for her. She
16 just recently voluntarily -- she knows my son likes sports.
17 He's 2 and he's getting into sports. She volunteered to keep
18 him overnight just because she knew he would enjoy going to a
19 Little League football game. It was just out of her own, you
20 know, the way she felt about my children. She's offered several
21 times to keep them on different occasions for mine and my
22 husband's anniversary, if we just want some time.

23 When I was pregnant with my daughter, she would ask me
24 did I want her to do anything to kind of help me so that when I
25 got my son, he would take a nap, you know, when I got home, so

1 that I was able to rest while I was pregnant, having a toddler
2 at home. She's helped me financially as far as when my children
3 needed things or just because she saw things that she knew they
4 would like. She's bought things for my children.

5 The relationship goes beyond just day care provider
6 and me being a parent. We're friends. I talk to her for
7 advice. When my children are sick, I call her sometimes before
8 I call my own mother because I trust her that unconditionally.

9 Q. You know the reason why we're here; is that correct?

10 A. Yes.

11 Q. What do you know about the incident that brings us
12 here today?

13 A. I know that there was a confrontation between
14 Ms. Harris and an old boyfriend and it became physical and there
15 was a resulting battery conviction.

16 Q. And does that change your opinion of her --

17 A. Not at all.

18 Q. -- as a day care provider, as a person?

19 A. I know that we all make mistakes. I've made some and
20 I do know first and foremost that Ms. Harris has. Since then, I
21 know her relationship with God has grown tremendously just in
22 the time I've known her. We both talk about God a lot. And I
23 don't know what anybody's else's relationship with God is but I
24 know that He's first in her life, first in her heart. And for
25 that reason, I know that she learned from what happened then and

1 now nothing like that would ever happen because her judgment is
2 now clearer as far as the judgment she would make in choosing
3 her friends. All I can say is I've learned from mistakes in the
4 past and I'm sure she has. And it in no way changes how I feel
5 about her.

6 Q. Do you feel that she should be able to continue as a
7 home day care provider?

8 A. Certainly. I know that I would be crushed if my
9 children couldn't continue to go to her. I know it would be a
10 disservice to HRS and to the Leon County area if people did not
11 have an opportunity to at least see Ms. Harris as a choice. And
12 I just -- I realize that there are rules and regulations. But I
13 see her deal with the children regularly. I spend time in her
14 home and I know that this is not something she does just for the
15 money.

16 Whatever happened in her past is the past and I am
17 more than convinced that it would be a disservice. That's an
18 understatement. I don't even know the terminology to use. But
19 I have no doubt that Ms. Harris is one of the best child care
20 providers, be it a center, a home, whatever, in Tallahassee.
21 And I say that from experience, from seeing it, from seeing my
22 children thrive. I can -- Ms. Harris -- I'm not sure -- she's
23 not required to do a lot of the things she -- I can go to her
24 and say, Ms. Harris, I'm working with my son on colors. She
25 would revamp whatever she had to do to help me with that. She's

1 helped me potty train my son without charging a fee.

2 If I'm not mistaken, many day care providers charge an
3 extra fee for extra services. She did it because she loves my
4 children and because she knows what's best for them and because
5 it's helping me. And anybody who does not have the best
6 interest for the children at heart would not do the things she
7 does.

8 She helps me with -- my son has a problem with having
9 regular bowel movements. She helps with that. She in no way
10 complains, and I don't mean to get too graphic, but there was a
11 time when my son had a bowel movement because I had given him
12 some medicine and it went everywhere. She talked to me about it
13 with a smile. I get upset when my son does that. Most people
14 would. She in no way was offended by it. She just counted it
15 part of her job.

16 I'm sure some day care providers would have called me
17 on my job to say, Come get your son. He has boo-boomed all over
18 the place. She in no way -- she then proceeded to advise me on
19 some things she thought I might try to help. And I just -- I
20 know beyond a shadow of a doubt that it would be a disservice
21 for her not to continue day care. Like I said, I would be
22 crushed. My children would be crushed. I just -- I can't
23 imagine having to take my children somewhere else. And I hope I
24 don't have to.

25 MS. GOIN: Thank you. I have nothing further.

1 MR. PERRY: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. PERRY:

4 Q. Ms. Brantley, my name is John Perry. I represent the
5 Department of Children and Families. I want to ask you a couple
6 of questions about your testimony here. Your children are named
7 Delcary and Iana?

8 A. Right.

9 Q. And you appear to care very much for them. Let me ask
10 you a question. As a mother, let us assume that you had Delcary
11 and Iana in the car with you in a car seat. And you were
12 driving down the road and you saw somebody that offended you.
13 Would you follow that person --

14 MS. GOIN: Objection. Hypothetical question.

15 THE COURT: I think it's appropriate. Overruled.

16 MR. PERRY: Thank you, Your Honor. Let me rephrase.

17 BY MR. PERRY:

18 Q. As a mother with Delcary and Iana properly in their
19 car seats in the back seat, if you were driving down the road,
20 saw somebody that offended you, would you stop the car, get into
21 a confrontation and fist-fight with that person?

22 A. Not an everyday occurrence.

23 Q. Are there any times when you would do that with your
24 children in the back seat?

25 A. Not with my children in the back seat.

1 Q. You would not consider that what a good mother would
2 do, would you?

3 A. No, but I can only speak for me. I cannot speak for
4 all good mothers.

5 Q. If you knew that about a person would you recommend
6 that person to take care of other people's children?

7 A. I would need to know more than just that because I'm
8 sure we all have things in our past that would change other
9 people's minds if they knew about it. I have things in my past
10 that people don't know and if they knew, I'm sure they would see
11 me differently. So if the person -- in reference as a person
12 like Ms. Harris, yes, I'd still recommend them, yes.

13 Q. So if Ms. Harris had done that, you would still
14 recommend Ms. Harris to other people?

15 A. Yes. Knowing her now, if it was in her past and I
16 know her personally now, yes, because I know how she is now. I
17 know her character now. So, yes, today I would.

18 Q. Knowing her character now?

19 A. Right.

20 Q. So her actions have persuaded you that what happened
21 in 1996 wouldn't happen again?

22 A. What do you mean by persuaded me? Do you mean that I
23 thought one way and she had to --

24 Q. No, no, no. That -- you've known her since October
25 1998?

1 A. Right.

2 Q. That because of what she has presented to you in the
3 form of her behavior and the way she's dealt with you, you would
4 say that she has persuaded you that even though she committed
5 these acts in 1996, you're not concerned about that happening
6 now?

7 A. Right.

8 Q. And you have been persuaded of this?

9 A. I didn't need to be persuaded. When I met Ms. Harris
10 I met her -- I was interviewing for day care providers. Nothing
11 ever made me think otherwise. I never had any reason to think
12 otherwise. So when I found out what had happened, I simply,
13 because I know her, I just said it was a mistake, in the past,
14 and I didn't need to be persuaded.

15 Q. Were you aware that Ms. Harris had received an
16 exemption from disqualification in 1996?

17 A. I'm not even -- an exemption from disqualification.
18 Explain that to me.

19 Q. I.e., were you aware --

20 MS. GOIN: Objection.

21 MR. PERRY: Withdraw the question, Your Honor.

22 MS. GOIN: I don't have anything further.

23 MR. PERRY: I don't have anything further. Thank you,
24 Your Honor.

25 THE COURT: Do you want to retain this witness?

1 MS. GOIN: No, she's free to go.

2 THE COURT: Ma'am, we appreciate your attendance and
3 you're free to go. Please don't discuss the case with
4 anyone until you hear it's concluded.

5 MS. GOIN: I'd like to call Kathryn Schmidt to the
6 stand.

7 THE COURT: Ms. Schmidt, if you'd come up here,
8 please. Ms. Schmidt, you remain under oath for the
9 duration of these proceedings.

10 Whereupon,

11 KATHRYN SCHMIDT

12 was called as a witness, and having been previously duly sworn
13 by the Court, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. GOIN:

16 Q. Could you state your name and address for the record
17 or your place of employment -- your name and place of
18 employment?

19 A. My name is Kathryn Schmidt and I work for Kids
20 Incorporated of the Big Bend.

21 Q. And what is your position with Kids Incorporated?

22 A. I'm a family child care specialist.

23 Q. And prior to working at Kids Incorporated, what did
24 you do?

25 A. I was a licensed family child care provider for about

1 four years.

2 Q. And prior to that where were you employed?

3 A. I was employed with Almost Home Child Care. I was a
4 preschool teacher for 3 and 4-year-olds.

5 Q. And for how many years were you employed at the day
6 care center?

7 A. Three years.

8 Q. What are your duties as a child care specialist with
9 Kids Incorporated?

10 A. I assist family child care providers who are just
11 getting started and also help to keep those that have their
12 businesses in business. I help them set up policies and
13 procedures, developing appropriate scheduling, help them to
14 purchase toys and equipment, room arrangement, that type of
15 thing.

16 I also assist providers that are seeking National
17 Association for Family Child Care Accreditation. I also assist
18 providers seeking their child development associate's
19 credential. I work on several different grants that affect
20 providers, Caring for Kids grants, infant/toddler grant. And
21 we're also working on an early Head Start Family/Child care
22 grant.

23 Q. And what degrees or certifications do you hold?

24 A. I hold a child development associate's credential and
25 I will also be completing my associate's of arts degree this

1 fall.

2 Q. And what kind of training is required or classes for
3 CDAs?

4 A. We take classes regarding child development. That's
5 the main part of the course. We also delve into health and
6 safety, best practices when working with children of different
7 ages. Especially when you have a CDA for family/child care, you
8 have to do your course of study from birth to school-age
9 children.

10 Q. And do you have -- are you working on any other
11 degrees right now? Do you have any degrees?

12 A. No, just the AA degree.

13 Q. Okay. How long have you known Ms. Harris?

14 A. I've known her for approximately five years.

15 Q. And how do you know her?

16 A. I first knew her as a family/child care provider. We
17 were both providers at the same time. I didn't really get to
18 know her very well then. We would meet at food program meetings
19 or something like that. I've known her for the past three years
20 professionally through Kids Incorporated and my work on grants
21 and things like that with her.

22 Q. Could you tell us a little bit more about these grants
23 that you worked on with her?

24 A. Okay. The Caring for Kids grant is a grant that we're
25 going into our fourth year with that grant. And these grants

1 are supposed to be for -- especially for family/child care
2 providers to help them get started up or help those that have
3 been in business to purchase toys and equipment and that sort of
4 thing.

5 Ms. Harris first applied for a grant in the fiscal
6 year '97/'98 and she received, I think, \$475. And she used
7 those funds to improve her playroom and buy toys and equipment
8 and paint and that sort of thing. And this past year she
9 received another grant for, I think, \$275 in which she took a
10 Second Helping training as an enrichment course for family/child
11 care providers.

12 Q. And how was she selected to receive these grants?

13 A. You have to apply for these grants. Once you have
14 turned in an application, the applications are reviewed by a
15 committee and then you're observed. We have a real quick
16 assessment of your home child care and then it goes to another
17 committee. And as long as you've met all those requirements and
18 you have a good proposal of what you want to do with the money,
19 then you would be selected.

20 Q. And could you explain the Second Helping course in a
21 little more detail?

22 A. The Second Helping course, most people think of it as
23 a nutrition-type course and it's not that at all. It's really
24 a -- you would call it an enrichment course for the provider.
25 It revitalizes a provider. It regenerates the provider. You

1 have to have been in business for 18 months before you can even
2 take this course. It's for experienced providers that have gone
3 through some of the difficulties of owning your own business and
4 also caring for young children and dealing with their families.
5 And it's four modules, it's 32 hours. And currently it costs
6 really close to \$200.

7 Q. And is it a mandatory class of day care providers?

8 A. No.

9 Q. How many providers in Leon County have taken the
10 Second Helping course?

11 A. Less than ten, around ten.

12 Q. How many providers are there in Leon County, home day
13 care providers?

14 A. Three hundred.

15 Q. What is a master provider?

16 A. A master provider is a provider who has completed the
17 Second Helping course. They also have been in business for at
18 least five years as a licensed home. And they've also been
19 nationally accredited or have their national CDA.

20 Q. And do you work with day care providers in order to
21 get them to be a master provider?

22 A. Yes. I'm a trainer for Second Helping. So I would
23 provide the training for them. Or if they were taking the
24 training somewhere else, I would encourage them to take Second
25 Helping training.

1 Also, through retention, I try to keep them in
2 business for five years. They say if you can be in business for
3 five years your chances of staying in the business are much
4 better. And then also I really highly encourage providers to
5 take their CDA or become accredited. I'm an advisor for both of
6 those. We have support groups for both of those and I'm also an
7 observer for both of those.

8 Q. And how many master providers are there in Leon
9 County?

10 A. There are only two.

11 Q. And have you worked with Ms. Harris in order to help
12 her become a master provider?

13 A. Yes, that's one of our goals, one of her goals. And
14 she has completed Second Helping and she's been in business for
15 around five years. And she really has a desire to take the CDA.
16 I think she's getting ready to actually start that course.

17 Q. Was she also selected to receive another grant, an
18 infant/toddler initiative grant?

19 A. Yes.

20 Q. Could you tell us about that grant?

21 A. Okay. This was a grant that was offered by the
22 Florida Children's Forum. Very recently we were able to apply
23 for the grant. And it was a maximum \$15,000 in which I
24 applied -- several people in the office applied, based on what
25 their jobs are, for child care centers, whatever. I applied for

1 infant/toddler grants to be used for family/child care
2 providers, specifically four providers that I wrote for
3 specifically in the grant by name. And I chose Ms. Harris
4 because she had been showing a lot of interest in developing
5 professionally and really wanted to move forward with developing
6 really high quality standards and high quality child care in her
7 home.

8 And I was real impressed with that and I felt like she
9 was -- the one thing when you're choosing people for grants is
10 there's always a fear that they might not be in business two
11 years from now or a year from now or something like that. And
12 because of Ms. Harris' desire for more professional growth and
13 education and that type of thing, I felt very confident in
14 giving her that grant.

15 Q. Now has the money been dispersed to her yet?

16 A. No, it hasn't. We've had to put that on hold because
17 of these proceedings here.

18 Q. And if she's allowed to continue as a day care
19 provider, if she's given the exemption, will she be given that
20 money?

21 A. Definitely. We need to actually proceed now. We're
22 in the process of developing plans for all the different homes
23 that we've selected. She may not be able to get that
24 infant/toddler money. But if not that money, we definitely want
25 to set aside Caring for Kids funds for her because we've already

1 started on a plan with her. She's got toys and equipment at her
2 house now that's probably still in boxes waiting to hopefully
3 get an exemption.

4 So if we can't do the infant/toddler grant, then we
5 would set aside the Caring for Kids funds for her.

6 Q. What was it about her day care when you were selecting
7 her for this infant/toddler initiative that you felt she was
8 deserving of this grant?

9 A. Well when looking for anyone, but especially with
10 Ms. Harris, I can definitely say that I look for a genuine
11 concern for the children in her care. I mean, that's the main
12 thing. That's why a lot of people want to get grants because
13 they want to improve their child care. Good interaction with
14 the children. That's something that's hard to teach no matter
15 how many classes you take. If you don't have that within you to
16 know how to talk with children in a manner that's going to be --
17 help them to develop, then it's probably not worth your time to
18 invest a lot of money into that.

19 Also, she already had a really great foundation. She
20 has a great playroom where she's got toys and equipment already
21 in there. And I really felt like we could add to that for her.
22 Also, I said this previously, but having the desire for ongoing
23 education, ongoing professional development, that's something
24 that is not always the rule in child care in general.

25 We have lots of programs like grants, like the School

1 Readiness Express Program that we have that are optional, like
2 Second Helping that's optional. It's not mandatory to take
3 those courses or be in those programs. And if you do go that
4 route, you're going to have people in your home, people from
5 Kids Incorporated are going to be in your home more often. And
6 there's a lot of providers that don't want that. They only want
7 the two times a year or whatever it might be to carry their
8 license and that's it. Ms. Harris has opened her program up and
9 said, you know, I want to develop my child care. This is my
10 profession. So that was a big one for me.

11 Q. Could you tell us a little bit more about the school
12 readiness program and what that is?

13 A. Okay. Actually, it was based on a ruling that came
14 from the Legislature, a school readiness, to get all 3 to
15 5-year-olds school ready basically although we know it starts
16 much younger than that.

17 Kids Incorporated developed a curriculum. And we -- I
18 also, either me or somebody else on staff, goes out and assists
19 providers in using that curriculum, monitors them to see if they
20 are using the curriculum. They can have screening for their
21 children. You know, it develops this way of tracking children
22 before they even get to school to make sure that they are on
23 track, that they are meeting these different milestones.

24 And that's something that actually we had it open, the
25 School Readiness Express Program and curriculum, which actually

1 costs \$125, open to everyone in Leon County. We had a special
2 grant for that. And it was especially open to our contracted
3 providers which Ms. Harris is not. But we opened it up to
4 voucher providers which Ms. Harris is.

5 And out of whatever, there are licensed homes even,
6 maybe 100 licensed homes or something like that. I only had, I
7 think, about five providers that were interested in that and she
8 was one of those. And the main reason why they are interested
9 in it is because they get more help. They get more help for
10 themselves and for the children in their care, the families in
11 their care for social services as well.

12 Q. Some people wouldn't be interested in it?

13 A. Right. They wouldn't want to be interested in it
14 because there are strings attached. As all grants and as all
15 agencies, we want to see improvement, we want to see growth.
16 We're going to be coming into the home.

17 Q. Have you had the opportunity to visit Ms. Harris' day
18 care and observe her with the children?

19 A. Yes, I have.

20 Q. Are there any other persons within Kids Incorporated
21 who regularly visit Ms. Harris' home?

22 A. Yes. Ms. Harris participates in the food program. So
23 our food program specialist, I think is her title, she goes out
24 to her home at least three times a year. Also, she is a
25 recipient of the resource mobile. And Linda actually goes out

1 every month. So they are at her home as well.

2 Q. Do these persons provide you with information about
3 Ms. Harris and her home day care?

4 A. Yeah, whenever, especially -- they know I'm the
5 contact person for family/child care at Kids Incorporated. So
6 whenever there is a provider that's having a problem or Gloria,
7 the food program specialist, might go in and the provider might
8 be over ratio or something like that, they would come and talk
9 to me because I have a relationship with those providers and I
10 can go in and talk to them about whatever problem they are
11 having, especially when choosing providers for grants. We don't
12 necessarily meet formally, although sometimes we do. But I
13 definitely value their opinion.

14 Q. And what is your opinion of Ms. Harris as a day care
15 provider?

16 A. I think Ms. Harris is a great family/child care
17 provider. I think she is an asset to the children and
18 especially to their families. Especially seeing where she is
19 now, which is good, and also where she wants to go. And I know
20 it's just -- she's got a lot of potential. And she has the
21 basis there for having a really great child care which seems to
22 me a genuine caring for the children in her care and their
23 families.

24 Q. Have you ever noticed anything or have any of the
25 other employees from Kids, Inc. noticed anything that would

1 cause you to be concerned about what was going on at the child
2 care center?

3 A. I've never experienced anything and nobody has ever
4 come to me with any kind of concerns. Ms. Harris herself called
5 me, you know, she wanted some help on room arrangement and that
6 type of thing. But nothing that would make me concerned.

7 Q. What qualities do you believe make a good day care
8 provider?

9 A. Well I think a desire to be a family/child care
10 provider, number one. I get people, especially when I'm working
11 with them in the start-up phase that will say things like, I
12 want to stay home because I don't want to work anymore. And as
13 any family/child care provider that's good can tell you, you
14 work very, very hard. And that's something she definitely does.

15 I see her constantly concerned with her child care and
16 how to improve it. And I've seen nothing but positive
17 interaction between her and the children. She's called me with
18 concerns for her children, for their parents, how can she get
19 assistance for them. She has a good basis for developmentally
20 appropriate toys and equipment.

21 Q. Do you-all have any requirements or standards as far
22 as discipline towards the children that the family day care
23 providers have to adhere to?

24 A. We go with what the Leon County Public Health Unit and
25 therefore, DC & F, Department of Children and Families, has in

1 their rules which is that, you know, punishment cannot be cruel
2 or -- I don't know all the wording of it. Any kind of
3 discipline or guidance needs to be in a constructive manner, not
4 a destructive manner. We want to redirect children if possible
5 with their behaviors, change the environment. A lot of behavior
6 problems is actually environmental, not from the child. And we
7 would never want the child to be yelled at or criticized or
8 belittled.

9 Q. What about spanking?

10 A. No, spanking is not allowed, no.

11 Q. Do you believe that Ms. Harris would ever be a danger
12 to the children in her care?

13 A. I've never seen anything that would tell me that. No,
14 I wouldn't think so.

15 Q. Do you believe that she should be allowed to continue
16 as a day care provider?

17 A. Yes, I do. I think she's an asset to the community.

18 Q. Oh, one thing.

19 MS. GOIN: I'd like to mark this as my next exhibit.

20 THE COURT: Petitioner's 9, a 6/13/2000 Schmidt
21 letter. It's marked for identification.

22 (Petitioner's Exhibit No. 9 marked for
23 identification.)

24 BY MS. GOIN:

25 Q. Could you identify this letter for us, please?

1 A. This is the letter I wrote when Ms. Harris came and
2 talked to me regarding some difficulties she was having and
3 could I write her a letter.

4 Q. And did you come and testify on her behalf previously
5 at a committee meeting where Mr. Perry, the attorney for the
6 Department of Children and Families, and some other employees of
7 the Department of Children and Families were present?

8 A. Yes, I did.

9 Q. And did you talk about the statements there in your
10 letter at that time?

11 A. I did. I can't remember if I brought the letter or if
12 you had the letter and I just talked about what was in the
13 letter and what my opinions were.

14 MS. GOIN: Okay. I'd like to have this admitted as
15 our next exhibit.

16 MR. PERRY: No objection.

17 THE COURT: It's admitted.

18 (Petitioner's Exhibit No. 9 received in evidence.)

19 MS. GOIN: I have nothing further.

20 THE COURT: Cross.

21 MR. PERRY: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. PERRY:

24 Q. Ms. Schmidt, my name is John Perry. I guess you
25 remember me from the earlier meeting?

1 A. Yes, I do.

2 Q. How long have you known Ms. Harris?

3 A. Approximately five years.

4 Q. Five years.

5 A. Yeah.

6 Q. That would be from 1995 until the present?

7 A. Probably if that's five years. I didn't know her real
8 well for the first probably two years. We were both
9 family/child care providers and we'd probably see each other
10 occasionally and then at food program meetings. I've known her
11 much better professionally for the past three years.

12 Q. What was your opinion of her during the first two
13 years that you met her -- that you knew her, I'm sorry.

14 A. Since I would see her only occasionally my opinion of
15 her was that, you know, she was another provider. You know, I
16 didn't really have too much of an opinion. I never went to her
17 home and I really didn't get to talk to her too much. When we
18 were meeting, we were meeting in larger groups.

19 Q. Okay. Now you currently work for Kids Incorporated?

20 A. Yes.

21 Q. And that used to be Big Bend 4C?

22 A. Yes, it did.

23 Q. Is Kids Incorporated involved at all in the screening
24 process for providers?

25 A. No.

1 Q. It is not. Okay. Now, as for want of a better term,
2 specialist, in day care and child day care, whatever the
3 terminology is, do you have an opinion on the appropriateness of
4 the following action? The following action being, a woman who
5 has children in her back seat who sees somebody who has offended
6 her, pulls off the road, gets out of the car, gets into an
7 altercation that develops into a fistfight with that individual,
8 now do you approve of that type of behavior in a day care
9 provider?

10 A. No, I wouldn't want you to leave children alone in a
11 car regardless of what was --

12 Q. You think that's a problem?

13 A. Yes.

14 Q. Okay. Now, are you aware that Ms. Harris has engaged
15 in that type of behavior?

16 A. I was not aware of specifics but I was aware there
17 was --

18 Q. Were you aware there were children in the back seat of
19 the car?

20 A. No.

21 Q. Four or six children depending on whose account you
22 believe.

23 A. Okay.

24 Q. Has Ms. Harris persuaded you that she is a good
25 candidate to provide day care services for children?

1 A. Has she persuaded me?

2 Q. Let me rephrase that. Are you persuaded by her and
3 what you have seen that she is a good provider for day care
4 services?

5 A. From what I've seen in her home when I have visited
6 her, yes, I would say she was a good child care provider.

7 Q. Are you aware that she has persuaded other people that
8 she was a good day care provider and could be trusted with
9 children?

10 A. Am I aware that she persuaded others that she was a
11 good child care provider?

12 Q. Uh-huh.

13 A. Of anybody that I know that has been in her home, I
14 know they have not told me that she was a bad provider.

15 Q. Okay. Are you aware that not even two months after
16 the incident we've be talking about where she got involved in
17 this battery that she persuaded a number of individuals that she
18 was a fit day care provider?

19 MS. GOIN: Objection.

20 MR. PERRY: It goes to her state of mind of whether
21 she can trust her own impression --

22 THE COURT: Let me hear the objection.

23 MS. GOIN: Well, again, this is going back to another
24 exemption hearing that's already been -- she's already been
25 given an exemption on that. So this is related to that and

1 I don't think it's appropriate for this witness.

2 THE COURT: That's the only objection?

3 MS. GOIN: Yes.

4 THE COURT: Overruled.

5 MR. PERRY: Madam court reporter, could you read my
6 question back?

7 (Court reporter reads back requested material.)

8 MS. GOIN: And my other objection is hearsay.

9 MR. PERRY: I'm just asking if she's aware of it, Your
10 Honor. I'm not asking her to repeat anything.

11 THE COURT: Overruled. You may answer.

12 THE WITNESS: Oh, okay. I don't know what that means
13 so, no, I'm not aware of that.

14 BY MR. PERRY:

15 Q. Okay. If, in fact, you were to learn that less than
16 two months after committing this battery she managed to persuade
17 a number of individuals in the decision-making process to go
18 ahead and grant her an exemption and assume also that those
19 individuals did not know about this incident?

20 MS. GOIN: Objection. He's assuming facts that are
21 not in evidence.

22 MR. PERRY: Your Honor, I think it has been
23 established that this was not mentioned during the hearing
24 process.

25 THE COURT: Okay. My concern here, Mr. Perry, is I

1 think that you have a failure to communicate. The constant
2 use of the word, "persuade," the vagueness of others, on
3 that basis I'm going to sustain the objection. Now you can
4 rephrase this in some way that connects to this case I'm
5 sure but I'm sustaining this objection.

6 MR. PERRY: Thank you, Your Honor. I apologize for my
7 lack of articulation on this part.

8 BY MR. PERRY:

9 Q. Let me be a little more precise. Are you aware that
10 Ms. Harris went through an exemption proceeding similar to this
11 one in 1996?

12 A. No.

13 Q. Are you aware -- then you would not be aware then that
14 she ultimately prevailed in that exemption proceeding?

15 A. I didn't know about the first one. So I didn't know
16 anything.

17 Q. And then you would also not be aware of the fact that
18 this information was not known by the decision-makers -- I'm
19 sorry, let me rephrase. That the occurrence of the incident on
20 July 26th, 1996 in which Ms. Harris got involved with the
21 battery which we're dealing with today, you would not be aware
22 that that was not known to the decision-makers in that 1996
23 exemption process?

24 A. This is the first I'm hearing about it so I have no
25 idea about any of it.

1 Q. Aren't you required to advise a victim of domestic?
2 About local domestic violence?

3 MR. PERRY: Objection, irrelevant.

4 MS. GOIN: They are trying to show that this was
5 domestic violence --

6 THE COURT: Overruled.

7 BY MS. GOIN:

8 Q. Did you send a copy of the police report to the local
9 domestic violence center?

10 A. I don't do that as a patrol officer. And we don't
11 have to advise him of a local domestic violence center. That is
12 incorrect if you think that's true.

13 Q. That's not what the law requires?

14 A. That is not what I'm required. We give out pamphlets
15 with information on it.

16 Q. Did you give him a pamphlet?

17 A. Yes, I did.

18 Q. And what is the pamphlet?

19 A. I don't have it with me. But it's a domestic
20 violence -- it gives phone numbers and help centers and so forth
21 on where they can go and it tells them more about the domestic
22 situation and so forth.

23 Q. And you gave him a domestic violence pamphlet?

24 A. We are required to do that, yes, to the victim, not to
25 the suspect but to the victim of the domestic violence.

1 MS. GOIN: I have nothing further.

2 MR. PERRY: No redirect, Your Honor.

3 THE COURT: May this witness be excused?

4 MR. PERRY: Yes.

5 THE COURT: Thank you for your attendance, Officer.
6 We appreciate it. Please don't discuss the case until you
7 hear it's complete.

8 MR. PERRY: I'd like to call as my next and last
9 witness, Ms. Christiane Le Clair.

10 THE COURT: Ms. Le Clair, I don't believe you were
11 sworn. Do you have a religious objection to swearing?

12 THE WITNESS: No.

13 Whereupon,

14 CHRISTIANE LE CLAIR

15 was called as a witness, having been duly sworn by the Court,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. PERRY:

19 Q. Could you state your name and spell your name for the
20 record, Ms. Le Clair?

21 A. Okay. It's Christiane Le Clair. C-H-R-I-S-T-I-A-N-E,
22 last name L-E, capital C, L-A-I-R.

23 Q. How are you employed, Ms. Le Clair?

24 A. I'm with the Department of Children and Families,
25 District 2. Presently I'm the background screening coordinator

1 for the district.

2 Q. And briefly what are your duties as background
3 screening coordinator?

4 A. I basically oversee screening requirements for
5 positions, employment and licensure of individuals. I basically
6 oversee the screening requirements for employment purposes and
7 licensure purposes of various areas that the Department is
8 responsible for.

9 Q. Okay. And did you oversee the process relative to the
10 request for exemption that Ms. Harris submitted to the
11 Department?

12 A. Yes.

13 Q. Okay. Maybe I should be more clear about that. Are
14 you -- did you oversee the process regarding Ms. Harris'
15 exemption request this year?

16 A. Yes.

17 Q. Was there a previous request that you were aware of?

18 A. Yes.

19 Q. Okay. Do you recall that particular exemption
20 request?

21 A. The first one was in '95.

22 Q. Okay. And do you recall the particulars of that
23 request?

24 A. That one was in regards to a manslaughter offense.

25 Q. Is there any particular reason why you recall that

1 one?

2 A. Well, the offense was egregious, very serious. And it
3 happened that it was the first exemption that I had sat in on.

4 Q. And are you aware that there was a hearing regarding
5 that exemption in September of 1996?

6 A. Yes.

7 Q. Okay. Did you attend that hearing?

8 A. Yes.

9 Q. Now did Ms. Harris testify at that hearing?

10 A. Yes.

11 Q. During her testimony did she say anything regarding
12 her arrest of July 21, 1996 -- and I apologize because I've been
13 saying July 26, 1996 -- but it is July 21, 1996. Did she say
14 anything about that arrest during the hearing?

15 A. No.

16 Q. Is that the kind of thing you would remember if she
17 did say?

18 A. Yes.

19 Q. Now I'm going to take us back to the second exemption
20 request, the one we're here on now. What was the disqualifying
21 offense?

22 A. Battery, domestic violence.

23 Q. Okay. And did you meet with Ms. Harris on June 19th,
24 2000 regarding this request?

25 A. Yes.

1 A. I remembered her saying three nights a week.

2 Q. Three nights a week.

3 MR. PERRY: Okay. Thank you. Thank you,
4 Ms. Le Clair, that's all I have on direct.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MS. GOIN:

8 Q. When you received the records back from FDLE on the
9 second screening that you did on Ms. Harris, what criminal
10 offenses were listed, the battery offense in particular, what
11 did it say?

12 A. It was a battery offense.

13 Q. Did it say battery or did it say domestic battery?

14 A. I believe the FDLE rap sheet said "battery."

15 Q. And now after you received those records the
16 Department sent Ms. Harris a letter telling her that she was
17 disqualified; is that correct?

18 A. That is correct.

19 Q. And what was the offense that was stated in that
20 record as being the disqualifying offense?

21 A. Battery, slash, domestic violence.

22 Q. How did you make the leap from battery in the FDLE
23 report to domestic battery in that letter from the Department?

24 A. From the court documents that I received from the
25 clerk of the court.

1 Q. And what did those documents say?

2 A. The documents said "battery" and "driving with a
3 suspended license." However, the arrest report goes on to
4 delineate the exact specifics of the incident and this
5 particular report clearly states that one certainly could infer
6 if it wasn't actually stated that she is in a domestic
7 relationship with Mr. Fields in that she was at least, I don't
8 know, four to six weeks pregnant by -- with Mr. Fields' child.

9 Q. Also when you looked at the records from the court,
10 you also got the information and the plea agreement that she
11 signed; is that correct?

12 A. Uh-huh.

13 Q. And do either of those records mention domestic
14 violence?

15 A. No.

16 Q. Now at the meeting in June of 2000 of this year, you
17 said that Ms. Harris did not mention whether there were any
18 other -- whether there were children in the car; is that
19 correct?

20 A. That's correct.

21 Q. Do you remember any specific questions about that?
22 Was she asked whether there were any children with her?

23 A. I would have had no real reason to ask her if there
24 were children in the vehicle with her.

25 MS. GOIN: I have nothing further.

1 Q. Ms. Harris, your testimony is that you did not see
2 Mr. -- your mom bite Mr. Fields. But isn't also your earlier
3 testimony that you didn't see the whole thing because you were
4 moving around trying to intervene in this situation?

5 A. Yes.

6 MR. PERRY: Thank you. No further questions.

7 THE COURT: Redirect?

8 MS. GOIN: No.

9 THE COURT: May she be excused?

10 MS. GOIN: Yes.

11 THE COURT: Ma'am, you're excused but please don't
12 discuss the case until you hear it's concluded.

13 MS. GOIN: I have nothing further.

14 THE COURT: Very well. Ms. Goin, will you be wanting
15 oral closing?

16 MS. GOIN: Yes.

17 THE COURT: Mr. Perry?

18 MR. PERRY: If she's taking it, I will too.

19 THE COURT: Will there be a transcript?

20 MS. GOIN: I will not be ordering a transcript.

21 MR. PERRY: Nor will the State, Your Honor.

22 THE COURT: Very well. And how long will you need to
23 do your proposed recommended orders? First I suppose I
24 should ask the third question. Will you be doing proposed
25 recommended orders?

1 with her boyfriend over an issue of jealousy under
2 circumstances that most people would deem to be, at best,
3 very inappropriate. And at worst, circumstances which
4 would endanger the children that were then in her care.

5 Now if she had -- if she was able to persuade a
6 seasoned Administrative Law Judge and then persuade the
7 Department that she was rehabilitated, the fact that she
8 can come up here and testify and that she can bring some
9 people to testify on her behalf, I don't think that really
10 bears a whole lot of weight. I don't think it's very
11 prohibitive because she's fooled people before, Your Honor.

12 Moreover, we have seen here today that Ms. Harris just
13 is not a very truthful person. She did not tell the
14 Department or the Administrative Law Judge in 1996 that she
15 had committed a battery on her boyfriend. Now there is no
16 way that any person with a lick of sense would not have
17 known that that was relevant to the issue as to whether or
18 not she should be entrusted with the care of children.
19 There was no way she could not have known that that was
20 relevant and yet she omitted to mention it.

21 Of course the argument comes back, Oh, gee, she was
22 under no legal obligation to do so. Well does that mean
23 the Department had a means of compelling her to do so, no.
24 The Department had no legal means of compelling her to do
25 so. But the burden of proof here is on Ms. Harris. It is

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