

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE           §  
PETITION OF BARBARA           §  
MACHETTE AND BARBARA       § No. 239, 2004  
HAYES FOR AN                   §  
EXTRAORDINARY WRIT         §

Submitted: June 14, 2004  
Decided: June 17, 2004

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

**ORDER**

This 17<sup>th</sup> day of June 2004, upon consideration of the petitioners' document entitled "Motion for Preliminary Injunction," the response filed by the Office of Disciplinary Counsel, and the petitioners' reply thereto, it appears to the Court that:

(1) The petitioners filed their document entitled "Motion for Preliminary Injunction" on June 1, 2004. Petitioner Barbara Machette states that she has an upcoming hearing before the Delaware Department of Public Instruction pursuant to the federal Individuals with Disabilities Education Act (IDEA).<sup>1</sup> Machette asserts that she cannot find an attorney to represent her at the administrative hearing and that she would like to "utilize the services of" petitioner Barbara Hayes, a non-lawyer, to represent her at the

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<sup>1</sup> 20 U.S.C. § 1400, *et seq.*

hearing. The petitioners jointly request a “one time suspension” of this Court’s decision in *In re Arons*,<sup>2</sup> which held that non-lawyer, educational specialists who represented parents of children with disabilities before State agencies had engaged in the unauthorized practice of law.

(2) It appeared to the Court that petitioners were requesting, in essence, that a writ be issued to the Office of Disciplinary Counsel, an arm of the Supreme Court, prospectively prohibiting ODC from prosecuting Barbara Hayes for the unauthorized practice of law if she represents Barbara Machette at the due process hearing. Accordingly, we requested ODC to respond to petitioners’ “Motion for Preliminary Injunction.”

(3) In its response, ODC asserts that there is no basis under the Court’s rules for a person to seek a preliminary injunction. ODC, therefore, asserts that the motion may be stricken as a nonconforming document.<sup>3</sup> Alternatively, ODC asserts, to the extent petitioners seek a writ prohibiting ODC from prosecuting Hayes, this Court’s extraordinary writ jurisdiction extends only to proceedings before trial courts and trial judges;<sup>4</sup> thus, the Court lacks original jurisdiction to issue an extraordinary writ either to ODC

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<sup>2</sup> 756 A.2d 867 (Del. 2000), *cert. denied*, 532 U.S. 1065 (2001).

<sup>3</sup> Del. Supr. Ct. R. 34.

<sup>4</sup> DEL. CONST. ART. IV, § 11 (the Delaware Supreme Court has jurisdiction to issue extraordinary writs to “any inferior court or courts established or to be established by law and to any of the Judges thereof....”).

or to the Department of Public Instruction. Finally, ODC asserts, while this Court stated in *Arons* that it would “consider adoption of a rule allowing lay representation in a certain limited class of cases” if there was a demonstrated need that was unmet by the local bar,<sup>5</sup> the Court, in fact, never adopted a change to its rules to permit lay representation at due process hearings before the Department of Public Instruction.<sup>6</sup> Accordingly, the decision in *In re Arons* is controlling law, and there is no basis for the Court to suspend the reach of that precedent on a one-time, ad hoc basis.

(4) The petitioners have filed a reply to ODC’s response. The petitioners assert they have “demonstrated that an unmet need exists.” Petitioners argue that “[t]ime is of the essence,” and they request the Court to adopt a rule that would permit non-attorney representation “in this limited case.” Petitioners contend that non-attorney representation is a federal issue under the IDEA and is supported by Delaware’s congressmen.

(5) After careful consideration of the parties’ respective positions, we find that the “Motion for Preliminary Injunction” manifestly fails on its face to invoke the jurisdiction of the Court. Even if the issue were ripe for the issuance of an extraordinary writ, this Court’s original jurisdiction

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<sup>5</sup> *In re Arons*, 756 A.2d at 874.

<sup>6</sup> Del. Supr. Ct. R. 57; Bd. Unauthorized Prac. L. R.4(c).

extends only to trial courts and judges thereof. Furthermore, the petitioners' request for a rule change to permit lay representation "in this limited case" is denied. There have been no changes, proposed or adopted, to the Court's rules since the *Arons* decision that would allow lay representation in this matter. To the extent that the Court might "consider the adoption of a rule allowing lay representation in a certain limited class of cases,"<sup>7</sup> it would not do so on an ad hoc, one-time basis.

NOW, THEREFORE, IT IS ORDERED that the "Motion for Preliminary Injunction" hereby is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>7</sup> *In re Arons*, 756 A.2d at 874.