MEMORANDUM OF LAW

TO: Honorable Judge Doris Gonzales

FROM: Eric Komar, Paralegal

DATE: 11/22/19

RE: The custodial proceedings of Harvey Weinstein and Georgina Chapman; the granting of sole custody to my client Ms. Chapman.  
  
Issue Presented: Under New York State Domestic Relations Law, does my client have the prerogative to claim sole custody of her children?

Brief Answer: Yes. The court may, as a precautionary measure, order the retention of child custody to the law-abiding parent when the other parent has been accused of a heinous crime. In this case, the heinous crime is rape. Child custody is not indefeasible. Legal rigor in favor of my position is established when DOM§70 (the value statement) is united with DOM§240 (the mechanism of action). This union can be further augmented in legal salience by the direct application of either the plain-meaning or mischief rule[[1]](#footnote-1) in the expansion of the scope of DOM§70+DOM§240. This amalgamation of law and rule regulates all relationships involving minors and their guardians. It proscribes any award of and rescinds any extant physical & legal custody of minors to potential or current guardians under indictment for sex crimes. It grants sole custody to the guardian(s) not under criminal investigation for aforesaid transgressions. If a guardian is not available, the court will appoint a *guardian ad litem* for the duration of the custodially-constraining legal action.

The facts as we known them: While Harvey Weinstein’s sexual impropriety was an open secret in Hollywood for close to a decade at the time of this writing; however, it was only as of October 2017 that the New York Times and The New Yorker published their exposés revealing the perverse nature of his crimes. For the first time, definitive proof was provided to substantiate rumors. The exposure of Mr. Weinstein’s sexual transgressions had an incendiary effect; hundreds of victims, primarily women but, in some cases, men who were either sexually assaulted or raped outright by those in positions of power emerged to the authorities and the media. They came forward in order to press charges against their alleged assailants in the court of law and to tell their stories to the world. This deluge has led to the forceful cleansing of the highest echelons of power. The overwhelming majority of the accused operate at the acme of television and film. The movement to bring elite sex offenders to justice has been given the moniker of ‘#MeToo’.

While Harvey Weinstein was busy abusing his power to rape women, my client, Ms. Chapman, was oblivious to it. She, a fashion designer and actress by trade, was far too engrossed at the firm she helped found and currently co-CEO’s[[2]](#footnote-2). She was, and currently is, a loving mother to nine-year old India Pearl and six-year-old Dashiell Max Robert; both of whom she had with Mr. Weinstein; and, whom, as far as my client is aware, have *not* been sexually abused or otherwise violated. It is ironic that Mr. Weinstein, a film director by trade, cast himself as the epigone to a nondescript loyal husband, loving father, and respected pillar of polite society all-the-while surreptitiously embodying the role of villain and whose wicked behavior eventually served as the catalyst of the #MeToo movement. The silver lining to the sordid affair is that now we, as a society, can have the discussion regarding sex crimes committed by those who use their positions of power for that express purpose. Perhaps this discussion can serve as some kind of consolation to the dozens of Mr. Weinstein’s victims.

The discussion of law: As the kind of localized paternalism of coverture[[3]](#footnote-3) lost its authority, the state, which was always the lawful vehicle of justice, began to exercise a more sweeping and potent paternalism over its citizenry. This paternalism becomes unmistakable when examining the relationship between the state and those whose capacity for self-preservation is somehow limited[[4]](#footnote-4). Each state government enacted its own laws regulating the interaction and composition of the familial unit. In New York State, these laws are codified in what is known as the Domestic Relations Law. In the broadest sense, this law informs and delimits the rights and responsibilities of parent—child; child—state; parent—state (and vice-versa) with the goal[[5]](#footnote-5) of “determin[ing] solely what is for the best interest of the child, and what will best promote its welfare and happiness, and make award accordingly[[6]](#footnote-6).” It is that flourishing which is the desideratum for all parties involved and the matter presented for due consideration today[[7]](#footnote-7).

It would be detrimental to the general welfare of my client’s two children, nine-year old India Pearl Weinstein and six-year-old Dashiell Max Robert Weinstein, to remain custodially retained by their biological father, Mr. Weinstein. The obscene number and repugnant nature of the sex crimes which have been levied against Mr. Weinstein is an indication of Mr. Weinstein’s chronically flippant regard for the law. That is dangerous and worthy of further examination. Broadly speaking, the mechanism of law has two main constituents. One of the constituents is corrective in nature; that constituent is more commonly known as punishment. The other aspect is prophylactic in purpose; its operation, unlike the former, is to make illegal behavior impracticable. We wish to make such behavior impossible. This can be achieved by granting sole custody to my client, Ms. Chapman. While there is no public expense more worthy than the condign punishment of wrongdoers; in this case, a court order granting my client sole custody of her two children is an election by the court of the latter position and obviates any need for the former. Mr. Weinstein would contend that there is no concrete statute which commands revision of the current joint custodial arraignment between himself and his two children. There is a principle which animates individual laws. These individual laws forbid the continued custody of children by unfit parents. This principle is alluded to in DOM§70; namely, it stipulates the continuous promotion of the best interest of the child involved in a custody dispute[[8]](#footnote-8). This principle is more commonly known as justice.

-Policy: Mr. Weinstein — apart from maintaining his innocence in all of the criminal matters of which he is a party — would argue that the Domestic Relations Law in general, and DOM§240 specifically, is an authoritatively complete particularization of the myriad do’s-and-don’ts which comprise the corpus of Family Law as it is practiced in New York State. On the topic of custodial delegation, Mr. Weinstein would pronounce the inapplicability and proclaim the ultimate impertinence of the custodial preclusions as enumerated in DOM§240. More generally, Mr. Weinstein’s alleged crime is not listed anywhere in the DOM. This glaring omission ostensibly establishes impertinence. We do not deny the paucity of rules regulating the relationships of children and criminally culpable parents in matters of alleged sexual offense. We recognize that the DOM§240 makes exception to only one type of relationship between a child and a convicted rapist[[9]](#footnote-9) and is completely removed from the management of relationships between children and those adults who have merely been *alleged* of a rape or sex crime. The letter of the law, in this case, is unambiguous in the scope and extent of behavior it intends to regulate. The letter of the law clearly supports Mr. Weinstein’s position. But what about the spirit (i.e. essence) of the law?

The essence of the law does not support Mr. Weinstein’s case. Edward Hirsh Levi’s monograph, *An Introduction to Legal Reasoning*, is a historical treatment of the logic informing the interpretation and application of case, statutory, and constitutional law. The logic informing the treatment and application of statutory law is one which has undergone some modification. What once had broad interpretation with the *Mann Act*[[10]](#footnote-10) has had its *denouement* in *Caminetti v. United States.[[11]](#footnote-11)* There, the plain-meaning rule was established. It was a rule which eschewed the then broad (i.e. ambiguous) interpretation of statues in favor of a literal statutory reading when the application of a particular statute was in issue. While a mechanical interpretation of the law was in ostensible order[[12]](#footnote-12), some juridical liberty was accorded to the courts. They had license to bespoke the law provided that their revision employed one of the three rules of interpretation[[13]](#footnote-13). This is how courts perfect the black-letter manifestation of a legal precept. In this case, while the letter of the law does not pose an obstacle to Mr. Weinstein’s continued custody of his two children, the essence invalidates it. The essence of a particular law, as a facet of the general principle of justice, always takes primacy over the legal letter. The essence of the law informs and modifies the letter of the law to more perfectly accord with the societal ideal of justice[[14]](#footnote-14). The ideal of justice informs all essences of all law within a particular system. In this case, given the abominable nature of the crimes which Mr. Weinstein is accused of perpetrating, it would be contrary to the essence of the Domestic Relations Law (and thus athwart the *sacrosanct* ideal which ultimately animates custodial justice) to permit continued guardianship until all legal matters of a sexual nature which Mr. Weinstein is accused of have been resolved in acquittal.  
 Conclusion: In the broadest sense, the law exists to create justice. The Domestic Relations Law is no different. The Domestic Relations Law is informed by the logic of Family Law. Family Law concerns the human condition. Family Law exists to harmonize human affairs. DOM§70 and DOM§240 recognize the harmonization of children’s welfare as a societal good worthy of the kind of legal advocacy presented before the court here today. DOM§70 serves as the moral preamble[[15]](#footnote-15) coordinating the mechanism of action that is DOM§240.

It has always been the responsibility of the court to impose the law judiciously. It has also always been the responsibility of the court to amend laws to consequence a more just application and execution. I contend that the juridical imperative today is to amend the law as needed to strip Mr. Weinstein of his legal custody until his full acquittal. The court must grant my client, Ms. Chapman, sole legal custody of her two children. To do otherwise would be an injustice.

Bibliography:

1. Levi, Edward H. *An Introduction to Legal Reasoning*. Vol. 15. Chicago, Illinois: University of Chicago, 1948.

1. The latter rule is the one which is utilized in this memo of law. In this particular case, I have determined it to be the most legally sound option available for my client. [↑](#footnote-ref-1)
2. In 2004, my client, along with Keren Craig (who is not a party to the matter) founded the high-end women’s fashion label *Marchesa.* [↑](#footnote-ref-2)
3. Coverture was a doctrine which dictated legal prerogatives under the umbrella of marriage. Woman’s legal status, already subordinate to that of a man’s, was, through the union of marriage, subsumed unto that of her husband’s. This colligation, from two complimentary but equally distinct units into a univocal whole had execution under the legal sanction of the state and the religious imprimatur of the church. The operating premise was that man and wife were ultimately one. The erosion and eventual abrogation of this legal principle had, as its concomitant, the increasing status of women — both single and wed, both *de facto* and *de jure*. This steady augmentation of woman’s status in relation with her male counterpart, from mere compliment to that of near-equal, had the consequence of investing explicitly paternal powers over the welfare of children unto the state. Prerogatives which were once, at least implicitly, reserved for the “man-of-the-house” are now under the direct commission of the government and its departments. It comes as great relief to me, as the paralegal for Ms. Chapman in the matter of securing custody over her two children, that my case is not a “test”-case establishing fundamental juridical authority over the *genus* of the matter-at-hand. By a similar token, I am elated that I do not have to work first to prevail over deeply-rooted, oppositional, and inveterate custom to establish the legal grounding from which I will work to secure the custody of my client’s children. Rather, the appeal is made directly to you, Honorable Judge Gonzales, one who is rule-bound and impartial in the execution of their chartered duties; duties which concern the matter presented here today. [↑](#footnote-ref-3)
4. Children — like my client’s — are the most conspicuous members of this group although others like the homeless and the mentally handicapped also fall under this classification. [↑](#footnote-ref-4)
5. The philosophical concept of *teleology*. [↑](#footnote-ref-5)
6. New York Consolidated Laws, Domestic Relations Law - DOM§70 [↑](#footnote-ref-6)
7. It is incontrovertible that Mr. Weinstein honestly believes, in the adytum of his perverted mind, that his claim for the retention of custody is not only morally justified but also legally sound. He is, after all, the biological father of India Pearl Weinstein and Dashiell Max Robert Weinstein. He has, purely within the parameters of a father’s obligations — paternal obligations divorced from the dozens of rape and sexual assault accusations leveled against him — been an acceptable provider. These, however, are material concerns. While important in the context of child maintenance, mere materialism is outweighed infinitely by the gravity of the charges levied against Mr. Weinstein. What matters is Mr. Weinstein’s character; someone of such an (alleged) character is a presumed public danger. Just as DOM§240, exceptions notwithstanding, precludes convicted murderers from entertaining the custody of a child so too should your interpretation the statute. However, any legitimization of my position must be couched in something with more legal standing than an appeal to emotion. This is attempted further on. [↑](#footnote-ref-7)
8. This principle can be directly applied to my client’s case in one of two ways. The first is the legislative: through direct and unambiguous proscription of, prior to an adjudication and acquittal, in the custodial guardianship of children when the person in question is accused of a sex crime. The second lay in the juridical: it is in entitling the courts to determine the “mischief and defect” that the statute set out to rectify. This clarification serves the dual function of delimiting that statute’s scope (making it less ambiguous) and increasing that statue’s power to more perfectly effect justice (fulfilling the *teleological* justification for law). The former is an option which is not available for me to utilize; the latter, however, is. The latter is otherwise known as the *mischief rule.* The *mischief rule* is *teleological*, it first ascertains the purpose of the statute in question and then rectifies the statute accordingly. This principle *seems* to deliver legal rigor. DOM§70, in conjunction with the abhorrent nature of the crimes that Mr. Weinstein is all but guilty of *can* be used to justify a proper amendment of DOM§240 and it *may* work. In fact, in the court of law, it *probably* will work. But is it foolproof? I posit that the only way of determining the merits of a legal principle lies less in the employ of clever eristical methods in court and more in the utilization of that legal principle as it relates to fashioning the law toward instantiating an ideal into being; an ideal which will improve the moral quality of Man. But this is conjecture. Any proof can only be found through experience; that is to say, toward a life lived in humbling service toward the most perfect realization of that adhered ideal. But this observation, while in line with the general theme of the memo, concerns a matter which is immaterial to the factual basis buttressing the custodial suit (i.e. the issue-at-hand). [↑](#footnote-ref-8)
9. DOM§240 (and its amendment in Senate Bill S2836C) prohibits convicted sex offenders from seeking custody or visitation rights for the child who was the victim of that particular sex crime. It is mum about convicted sex offenders seeking custody or visitation rights for their own children. It is silent about ***alleged*** sex offenders seeking custody or visitation rights for their own children. We recognize that Mr. Weinstein has an unblemished record in the “father department”. Yet, as shall be shown, this flawless aspect of his character—perhaps the only one not at legal contention—is almost tangential to the matter-at-hand. [↑](#footnote-ref-9)
10. Formerly known as the White-Slave Traffic Act of 1910. [↑](#footnote-ref-10)
11. 242 U.S. 470 (1917) [↑](#footnote-ref-11)
12. To be sure, Levi does present qualification to the plain-meaning rule. He notes a linguistic exception to the rule when he recognizes that the words of a particular statue “are to be construed in the light of the meaning given to other words in the same or related statute.” (p.520) This is a practical application of the *ejusdem generis* rule; it is a rule which justifies a less literal structural interpretation of codified law to realize a more essentially proper and juridically applicable appreciation of the law in question. The rule is one which proffers amendment in accord with the legal logic of the statute. If the issue (the species) at question is one absent from the jargon of a statute; but, through adjudication, has been concluded a germane omission to legislative intent, the *ejusdem generis* is the ideal mechanism of shoehorning that particular exception into the regulatory compass of the law. Understood in this context, the law is the statutory aggregate (the genus) from which all particular issues (the species) are rigidly defined. In the same vein, counsel, when presenting its case before the court, may elect an undertaking of the thorough excavation of the “rules of construction” to determine legislative intent and the commensurate juridical expansion of statutory scope. Levi explicates the mechanism: “The report of congressional committees…[p]rior drafts…[b]ills presented but not passed...[w]ords spoken in debate…even the conduct of litigants” (p.520) are all contextual ancillaries which, in varying degrees, reveal the essence of an enacted statute. The ratification process may have expurgated relevant particulars from the letter of the law. Hence the need for redress-via-litigation. Litigation of this sort evinces a more lucid understanding of statutory intent. Levi goes on to adumbrate the interplay between legislative edict and juridical decision when he notes that: “[once] a decisive interpretation of legislative intent has been made, and in that sense a direction has been fixed within the gap of ambiguity, the court should take that direction as given.” (p.523) While it is my prerogative to argue the *ejusdem generis* rule in this custody hearing, I elect not to do so. Rather, I contend the use of the mischief rule in any adjudication of the custody case. The mischief rule is legally rigorous. The mischief rule is authoritative. The mischief rule best qualifies the union of DOM§70 and DOM§240. The mischief rule — as a *teleological* treatment of case law — jettisons the semantic (and material) thrust of the plain-meaning rule in lieu of an essentialist (necessarily metaphysical) treatment of the law-in-question. The mischief rule offers the court the organizing and justificatory principle to amend the law as it currently stands. A proper amendment is one which more perfectly comports the mechanism of DOM§240 with its animating value-statement in DOM§70. This is my petition before the court — a ruling which tunes the mechanism of DOM§240 to a more perfect execution of the value-statement in DOM§70. [↑](#footnote-ref-12)
13. To provide a bit of context (while consciously avoiding extraneous detail) to the juridical mechanism of legal amendment (and, in some cases, emendment), legal alteration follows three general paths otherwise known as the rules of interpretation. They are as follows: *the plain-meaning rule* (which contends a literal reading of a statue to determine its intent), *the golden rule* (which seeks to obviate an absurd outcome to a literal statutory application, and *the mischief rule* (which uncovers the matter that the statue is meant to rectify and amends the statute accordingly). In this case, I contend an application of the mischief rule in delivering justice to my client. [↑](#footnote-ref-13)
14. *The Form of The Good* [*The Republic*; 508e2-508e3]is, like our contemporary societal ideal of justice, the universal which informs all particular particulars. While inconceivably perfect (and beautiful), it gives essence to the ideal (the Platonic Form) of law which, in turn, is inculcated in metaphysical essence of law, is materially manifested in black-letter and case law, and pulsates via human relations within the whole of society. Disclaiming all juridic-philosophic pretense, I argue that it is ultimately the ideal form of law ***itself*** (and, by extension, *The Form of The Good*) which, however imperfectly Man’s institutions radiate this Absolute, must nevertheless glitter vis-à-vis adjudication. [↑](#footnote-ref-14)
15. “[T]he court shall determine solely what is for the best interest of the child, and what will best promote its welfare and happiness, and make award accordingly.” — DOM§70 [↑](#footnote-ref-15)