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BSRB

Terry D. Hamblin, #10880
Assistant Attorney General
Kansas Judicial Center, 2nd Floor
Topeka, Kansas 66612
913/296-2215
MACK/P

BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD

IN THE MATTER)
)
 OF) Case No. 349
)
 KATHRYN A. MACKINTOSH, LBSW)
 _____)

PETITION

COMES NOW the Kansas State Behavioral Sciences Regulatory Board and initiates these proceedings under the provisions of K.S.A. 1991 Supp. 65-6311 and for its cause of action, alleges and states:

1. The Kansas State Behavioral Sciences Regulatory Board, hereinafter referred to as the "Board," has received a complaint, has investigated the complaint, and has determined there are reasonable grounds to believe respondent has committed acts in violation of the Kansas Licensure of Social Workers Act, K.S.A. 65-6301, et seq. The Board has requested the Office of the Attorney General to prosecute this action. Robert T. Stephan is the duly elected and acting Attorney General for the State of Kansas.

2. Respondent's mailing address last known to the Board is 8918 Armstrong Avenue, Kansas City, Kansas 66112.

3. Respondent is or has been entitled to practice as a licensed bachelors social worker in the State of Kansas, having been issued License No. LBSW-2147.

4. Since the issuance of the license, respondent has committed acts in violation of K.S.A. 1991 Supp. 65-6311(a)(4) and (5), to-wit:

FACTS COMMON TO ALL COUNTS

5. On March 11, 1991, the board received a complaint from Barbara J. Armstrong that "Miss McIntosh" (sic) has a biased outlook and has shown an unprofessional attitude" as evidenced by her refusal to change her testimony in a February 1, 1991 court hearing after being presented with overwhelming evidence that the position she had taken could not be true. This was followed by an incident in which "she was rude ... and used profanity."

6. On April 10, 1991, respondent was notified of the foregoing complaint by the Executive Director of BSRB, Mary Ann Gabel, by certified mail, return receipt requested, addressed to respondent at [REDACTED] Respondent was requested to respond to the complaint within 30 days.

7. On May 2, 1991, respondent was notified by the Executive Director in writing that additional information had been received regarding the complaint. A copy of this new material was enclosed with this correspondence.

8. On June 28, 1991, the Executive Director wrote to respondent reminding her that a response to the complaint was past due and advising respondent that failure to respond would be a violation of K.A.R. 102-2-7(b)(9).

9. As of the date of filing this petition, respondent has failed to respond to the complaint lodged against her.

COUNT I

10. Based upon the above recited facts, which are hereby incorporated by reference herein as if fully set forth herein, respondent has committed an act of unprofessional conduct in violation of K.S.A. 1991 Supp. 65-6311(a)(4) as defined in K.A.R. 102-2-7(a)(9) in that she has refused to cooperate in a timely manner with the board's request for assistance with an investigation of a complaint lodged against her.

COUNT II

11. Based upon the above recited facts, which are hereby incorporated by reference herein as if fully set forth herein, respondent has committed an act of

unprofessional conduct in violation of K.S.A. 1991 Supp. 65-6311(a)(4) as defined in K.A.R. 102-2-7(a)(11) in that she has practiced inhumane or discriminatory treatment toward any person or group of persons.

COUNT III

12. Based upon the above recited facts, which are hereby incorporated by reference herein as if fully set forth herein, respondent has committed an act of unprofessional conduct in violation of K.S.A. 65-6311(a)(4) as defined in K.A.R. 102-2-7(a)(38) in that she knowingly reported distorted, erroneous or misleading information.

COUNT IV

13. Based upon the above recited facts, which are hereby incorporated by reference herein as if fully set forth herein, respondent has committed an act of unprofessional conduct in violation of K.S.A. 65-6311(a)(4) as defined in K.A.R. 102-2-7(a)(45) in that she practiced social work in an incompetent manner.

COUNT V

14. Based upon the above recited facts, which are hereby incorporated by reference herein as if fully set forth herein, respondent has violated K.S.A. 1991 Supp.

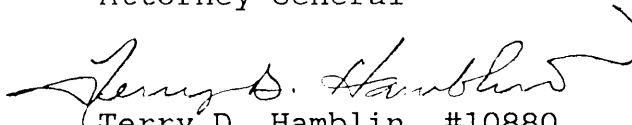
65-6311(a)(5) in that she is guilty of negligence or wrongful actions in the performance of her duties.

The Board has the power pursuant to K.S.A. 1991 Supp. 65-6311(a)(4) and (5) to suspend, limit, or revoke the license of any social worker guilty of unprofessional conduct as defined by rules or regulations established by the Board or who is guilty of negligence or wrongful actions in the performance of a social worker's duties.

WHEREFORE, petitioner prays the Board serve the respondent a copy of this Petition and a copy of a Notice of Hearing as required by law. Petitioner further prays that upon evidence presented at the hearing, the Board make findings and conclusions that respondent has committed acts in violation of the Kansas Licensure of Social Workers Act, K.S.A. 1991 Supp. 65-6301 et seq. and that the Board take and impose such disciplinary action as it shall deem just and proper.

Respectfully submitted,

ROBERT T. STEPHAN
Attorney General



Terry D. Hamblin, #10880
Assistant Attorney General
Kansas Judicial Center, 2d Floor
Topeka, Kansas 66612-1597
913/296-2215

Attorneys for Petitioner

MAY 11 30 AM '92

BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD
Landon State Office Building, 855-S
Topeka, Kansas 66612-1220
(913)296-3240

In the Matter)	
)	
of)	Case No. 349
)	
KATHRYN A. MACKINTOSH,)	
LBSW)	
_____)	

PROPOSED DEFAULT ORDER

Now on this 6th day of May, 1992 the above-referenced matter comes on for hearing before the Behavioral Sciences Regulatory Board on a Petition alleging Respondent committed certain acts in violation of the Licensure of Social Workers Act, K.S.A. 65-6301 et seq., and amendments thereto. Petitioner appears by Terry Hamblin, Assistant Attorney General/Litigation Counsel to the BSRB. Respondent does not appear.

Whereupon Petitioner moves that judgment by default be entered and proffers evidence in support of certain violations of the Licensure of Social Workers Acts as set forth in the Petition.

The hearing panel, having been presented with copies of the Petition and Notice of Hearing, and being fully and duly advised, after due deliberations make the following findings of fact and conclusions of law:

COPY

FINDINGS OF FACT

1. Respondent is a licensed bachelors social worker in the state of Kansas, having been issued license no. LBSW-2147, which expires October 31, 1992.

2. On March 25, 1992, a copy of the Petition and Notice of Hearing was mailed to Respondent at her last known address, to wit, [REDACTED]

3. In February, 1991 Respondent testified in her capacity as a social worker in a child visitation hearing in the district court of Wyandotte County, Kansas.

4. Based on statements made by a three-year old child, Respondent testified that a fifteen year old committed an act of sexual abuse against the child at a date, time and place certain.

5. When presented with conclusive evidence that the fifteen year old was elsewhere at the date and time indicated, respondent continued to maintain her position regarding the guilt of the teenager at the specified date, time and place.

6. Following the hearing, Respondent verbally abused the teenage, using profanity and belittling her.

7. A complaint was lodged against Respondent based on the foregoing events.

8. On April 10, 1992 the executive director for BSRB mailed a certified letter to Respondent at her last known address, advising Respondent of the nature of the complaint and

notifying Respondent to respond to the allegations within 30 days. The letter was returned and re-mailed to Respondent at her place of employment, Social and Rehabilitation Services.

9. On May 2, 1992 the executive director mailed additional information regarding the complaint to Respondent at the home address.

10. On June 28, 1991 the executive director mailed another letter to Respondent at the home address, reminding Respondent of her affirmative duty to respond and cooperate with investigation of allegations of violations of the Licensure of Social Workers Act.

11. Respondent did not respond to any of the letters mailed to her.

12. Board member sue Bauman was subsequently assigned to investigate the allegations made against Respondent and was unable to elicit any response or cooperation from Respondent in the investigation.

CONCLUSIONS OF LAW

1. The BSRB has jurisdiction over Respondent Kathryn A. Mackintosh, a licensed worker pursuant to K.S.A. 65-6301 et seq. and amendments thereto.

2. A copy of the Petition, Notice of Hearing and the possibility of default proceedings were served on Respondent in compliance with K.S.A. 77-518 and K.S.A. 77-531.

3. Since Respondent failed to attend or participate in the hearing scheduled for May 6, 1992, a proposed default order may be served upon Respondent pursuant to K.S.A. 77-520.

4. Respondent committed an act of unprofessional conduct in violation of K.S.A. 1991 Supp. 65-6311(a)(4) as defined by K.A.R. 12-2-7(a)(9) in that she has refused to cooperate in a timely manner with the board's request for assistance with an investigation of a complaint lodged against her.

5. Respondent committed an act of unprofessional conduct in violation of K.S.A. 1991 Supp. 65-6311(a)(4) as defined by K.A.R. 102-2-7(a)(38) in that she knowingly reported to a court through her testimony distorted, erroneous or misleading information.

6. Respondent committed an act of unprofessional conduct in violation of K.S.A. 1991 Supp. 65-6311(a)(4) as defined by K.A.R. 102-2-7(a)(45) in that she practiced social work in an incompetent manner.

7. Respondent violated K.S.A. 1991 Supp. 65-6311(a)(5) in that she is determined to be guilty of wrongful actions in the performance of her duties.

8. Pursuant to K.S.A. 1991 Supp. 65-6311 the board is authorized to revoke the license of a social worker who is found guilty of unprofessional conduct or wrongful actions in the performance of duties.

WHEREFORE, judgment is proposed to be entered in default in accordance with the above Findings of Act and Conclusions of law and Kathryn A. Mackintosh's license to practice social work in the state of Kansas is hereby ordered revoked.

IT IS SO ORDERED.

Dated this 13TH day of May, 1992.

JOSEPH N. ROBB
Joseph Robb, for the BSRB
Hearing Panel consisting of
Joseph Robb, Thelma Simmons
and Ronald Reinert

NOTICE REGARDING RELIEF FROM THIS ORDER

This is a proposed default order. Within seven (7) days after service of this proposed default order, you may file a written motion requesting that this order be vacated and stating the grounds relied on for vacation of this order. This proposed default order becomes effective after expiration of the seven days unless such a written motion is filed. Filing such a motion does not, by itself, vacate this order. Upon receipt of a motion to vacate the proposed default order, the BSRB

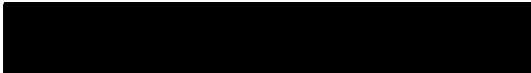
hearing panel will either vacate the order and set the matter for hearing OR issue the default order as proposed. If the hearing panel issues the default order as proposed, the order becomes effective upon service.

JOSEPH N. ROBB
Joseph Robb, for the BSRB
Hearing Panel

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing PROPOSED DEFAULT ORDER was served by depositing the same in the United States mail, first-class postage prepaid, the 13TH day of May, 1992, to:

Kathryn A. Mackintosh



and at, Social and Rehabilitation Services
P.O. Box 171248
Kansas City, Kansas 66117

and

Terry Hamblin
Assistant Attorney General
Kansas Judicial Center, 2nd Floor
Topeka, Kansas 66612

JOSEPH N. ROBB
Joseph Robb, for the BSRB
Hearing Panel

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**BEHAVIORAL SCIENCE
REGULATORY BOARD**

BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD
Landon State Office Building, Room 855-S
Topeka, Kansas 66612
(913)296-3240

In the Matter)
)
 of) Case no. 349
)
 KATHRYN A. MACKINTOSH, LBSW)
)

INITIAL ORDER

Now on this 5th day of August, 1992, the above-captioned matter comes on for hearing before the Kansas Behavioral Sciences Regulatory Board (BSRB) with board members Joseph Robb, Thelma Simmons and Ronald Reinert presiding.

Petitioner appears by Terry Hamblin, Assistant Attorney General General and Litigation Counsel for BSRB. Respondent appears in person and by J. Charle Droege, Attorney at law.

Whereupon the hearing panel inquires whether Respondent has any objections to BSRB's jurisdiction, to the form of the Petition or to notice of this proceeding. Hearing no objection, the hearing panel proceeds.

Whereupon Petitioner and Respondent present the hearing panel with certain written stipulations number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19 and 20, which the hearing panel accepts.

Whereupon Petitioner and Respondent waive opening statements.

Whereupon Petitioner presents the testimony of Mary Ann Gabel, Barbara Armstrong, Christa Phillips and Sharon Farrow.

Whereupon Petitioner rests.

Whereupon Respondent moves for a directed verdict, arguing that Petitioner has not met the burden of supporting his claims by a preponderance of the evidence as to Counts 1, 2, 3, 4 or 5. Petitioner concurs with Respondent's motion as to Counts, 2, 3 and 4 in full and as to Count 5 as it pertains to negligence in the performance of Respondent's duties. Petitioner argues against Respondent's motion for a directed verdict as to Count 1 and as to Count 5 as it pertains to wrongful actions in the performance of Respondent's duties.

Whereupon the hearing panel retires to deliberate Petitioner's motion for a directed verdict.

Whereupon the hearing panel announces its decision as to Petitioner's motion for a directed verdict as follows:

As to Counts 2, 3 and 4, the hearing panel grants Respondent's motion for a directed verdict and dismisses those counts. As to Count 5 the hearing panel grants Respondent's motion for a directed verdict as it pertains to negligence in the performance of her duties and

dismisses Count 5 as it pertains to negligence in the performance of her duties.

As to Count 1, wherein Respondent is alleged to have committed an act of unprofessional conduct in violation of K.S.A. 1991 Supp. 65-6311(a)(4) as defined in K.A.R. 102-2-7(a)(9), the hearing panel in a two to one decision determines that "refusal to cooperate in a timely manner with the board's request for assistance with an investigation of a complaint lodged against her," includes a board request to provide a written statement to the board within 30 days outlining the licensee's version of circumstances and conduct complained of. Accordingly the hearing panel denies respondent's motion for a directed verdict as to Count 1.

As to Count 5, wherein Respondent is alleged to be guilty of wrongful actions in the performance of her duties in violation of K.S.A. 1991 Supp. 65-6311(a)(5), the hearing panel in a three to zero decision determines (1) that Respondent was not acting "in the performance of her duties" as a social worker when she had a verbal encounter with Christa Phillips in the corridor of the Wyandotte County Courthouse on February 1, 1992; (2) that while Respondent's language toward Christa Phillips was inappropriate, it does not rise to a "wrongful action;" (3)

that Respondent testified in a visitation hearing held on February 1, 1991 in the District Court of Wyandotte County "in the performance of her duties" as a social worker; and (4) that Respondent's answers to certain hypothetical questions given during the course of the hearing, when taken in context of the whole visitation hearing (as evidenced by the transcript of the entire hearing), are not considered "wrongful actions." Accordingly, the hearing panel grants Respondent's motion for a directed verdict as to Count 5 as it pertains to wrongful actions the performance of Respondent's duties as a social worker and dismisses Count 5 in its entirety."

Whereupon Respondent presents the testimony of Kathryn A. Mackintosh.

Whereupon Respondent rests.

Whereupon Petitioner and Respondent present closing arguments.

Whereupon Petitioner's Exhibits Number 1, 2, 3, 4 and 5 are admitted without objection.

Whereupon the hearing panel retires to deliberate.

Whereupon the hearing panel announces its decision as to Count 1 and then hears statements and arguments of counsel regarding appropriate discipline in relation to Count 1.

Whereupon the hearing panel makes the following Findings of Fact, Conclusions of Law and order as to Count 1 of the Petition:

FINDINGS OF FACT

1. Kathryn Mackintosh resides at [REDACTED] [REDACTED] which is the last known address appearing in BSRB records; she has resided at that address continuously since March, 1991.

2. Kathryn Mackintosh is a licensed bachelors social worker in the State of Kansas, having been issued license number LBSW-2147, which expires October 31, 1992.

3. Kathryn Mackintosh is employed by the Kansas Department of Social and Rehabilitation Services (SRS) in Kansas City, Kansas and has been continuously employed by the Kansas City, Kansas SRS office since March, 1991.

4. The mailing address for the Kansas City, Kansas SRS office is P.O. Box 171248, Kansas City, Kansas 66117.

5. On March 11, 1991, Mary Ann Gabel, executive director of BSRB received a complaint form from Barbara Armstrong complaining about certain acts allegedly committed by Kathryn Mackintosh in her capacity as a licensed social worker. (See Petitioner's Exhibit No. 1).

6. On April 10, 1991, Mary Ann Gabel mailed a certified letter to Kathryn Mackintosh at 8918 Armstrong, Kansas City,

Kansas 66112 which advised Kathryn Mackintosh that a complaint had been received by BSRB and the nature of the complaint. (Petitioner's Exhibit No. 2).

7. The letter also requested that Kathryn Mackintosh to respond to the allegations of the complaint within thirty days. A copy of the complaint form was included with the letter. (Petitioner's Exhibit No. 2).

8. This letter was returned to the BSRB office with a United States Post office stamp marked "Not Claimed." (Petitioner's Exhibit No. 2).

9. On May 3, 1991, this same letter and accompanying complaint form was then mailed by certified mail to Kathryn A. Mackintosh to Social and Rehabilitation Services, P.O. Box 171248, Kansas City, Kansas 66117. (Petitioner's Exhibit No. 2).

10. Subsequent to May 3, 1991, Mary Ann Gabel received a green card from the United States Post Office indicating that the May 3 certified letter was received by "A" or "S" David on May 6, 1991. (Petitioner's Exhibit No. 2).

11. Kathryn Mackintosh acknowledges receiving Petitioner's Exhibit No. 2.

12. On May 2, 1991 Mary Ann Gabel mailed by first class mail additional information concerning the complaint to Kathryn Mackintosh at [REDACTED] [REDACTED]. (Petitioner's Exhibit No. 3).

13. This letter was never returned to the BSRB office.

14. Kathryn Mackintosh does not recall whether she received Petitioner's Exhibit No. 3.

15. On June 28, 1991 Mary Ann Gabel mailed by first class mail a letter to Kathryn Mackintosh at the Kansas City, Kansas SRS office advising her that she had failed to respond to the first two letters, advising her that such failure could be considered an additional ground for disciplinary action and directing her attention to K.A.R. 102-2-7(b)(9). (Petitioner's Exhibit No. 4).

16. This letter was never returned to the BSRB office.

17. Kathryn Mackintosh acknowledges receiving Petitioner's Exhibit No. 4.

18. Kathryn Mackintosh did not respond in any manner to any of the letters mailed to her by Mary Ann Gabel.

19. On February 19, 1992 a five count Petition was filed In the Matter of Kathryn Mackintosh by BSRB's litigation counsel. (Agency Record).

20. On March 25, 1992, a copy of the Petition and a Notice of Hearing were mailed by first class mail to Kathryn Mackintosh at her home address and at the Kansas City, Kansas SRS office. (Agency Record).

21. On May 6, 1992 a BSRB hearing panel called the case captioned In the Matter of Kathryn Mackintosh for hearing; Kathryn Mackintosh did not appear. (Agency Record).

22. On May 13, 1992 a copy of a Proposed Default Order was mailed by first class mail to Kathryn Mackintosh at her home address and at the Kansas City, Kansas SRS office. (Agency Record).

23. On May 20, 1992 Kathryn Mackintosh filed a Motion to Vacate the Proposed Default Order; Petitioner filed his Response to this motion on June 4, 1992. (Agency Record).

24. On July 1, 1992 an Order Setting Aside the Proposed Default Order was mailed by first class mail to Kathryn Mackintosh at her home address and at the Kansas City, Kansas SRS office. (Agency Record).

25. On July 1, 1992 a Notice of Hearing as mailed by first class mail to Kathryn Mackintosh at her home address and at the Kansas City, Kansas SRS office. (Agency Record).

CONCLUSIONS OF LAW

1. BSRB has jurisdiction over Kathryn Mackintosh, a licensed social worker, pursuant to K.S.A. 65-6301 et seq., and amendments thereto.

2. Notice of the May 6, 1992 hearing and of the August 5, 1992 hearing were properly served on Kathryn Mackintosh more

than ten days prior to each of the hearings, pursuant to K.S.A. 77-518 and 77-531.

3. K.S.A. 1991 Supp. 65-6311(a)(4) establishes unprofessional conduct as a ground for which BSRB may revoke, suspend or limit a license to practice social work in the state of Kansas.

4. Unprofessional conduct is defined in K.A.R. 102-2-7(a)(9) to include refusal to cooperate in a timely manner with the board's request for assistance with an investigation of a complaint lodged against her.

5. By failing to respond to BSRB's requests for a written statement outlining her version of the circumstances and conduct complained of, Kathryn Mackintosh refused to cooperate in a timely manner with the board's request for assistance with an investigation of a complaint lodged against her in violation of K.A.R. 102-2-7(a)(9), an action of unprofessional conduct.

IT IS THEREFORE ORDERED that Kathryn Mackintosh's license to practice social work in the state of Kansas be and hereby is suspended for a period of one year from the effective date of this Initial Order.

IT IS FURTHER ORDERED that said suspension be stayed for a period of one year from the effective date of this Initial Order on the condition that Kathryn Mackintosh comply with the following requirements:

1. Kathryn mackintosh shall study the Kansas statute and regulations governing the practice of social work in the state of Kansas.

2. Kathryn Mackintosh shall develop a written outline for an oral presentation to be given to the social workers in her unit at the Kansas City, Kansas SRS office regarding disciplinary grounds and the disciplinary process, including but not limited to the necessity of responding to complaints filed with BSRB.

3. Kathryn Mackintosh shall notify the BSRB office by August 25, 1992 regarding whether or not she is able to obtain SRS cooperation for such a presentation. If SRS is unwilling to cooperate, BSRB will advise Kathryn Mackintosh in writing of an alternative requirement.

4. Kathryn Mackintosh shall submit a copy of the written outline to the BSRB office by October 15, 1992.

5. Kathryn Mackintosh shall give the oral presentation to the social workers in her unit at the Kansas City, Kansas SRS office by November 30, 1992.

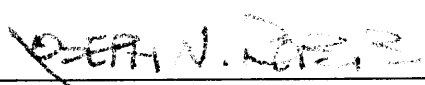
6. Kathryn Mackintosh shall notify BSRB member Thelma Simmons of the date, time and place of the oral presentation so that Mrs. Simmons may be present to hear the presentation. Mrs. Simmons may be contacted at District Office

Highland, 6200 Roe, Shawnee Mission, Kansas 66205. (Telephone 722-1810).

7. Kathryn Mackintosh shall not violate any Kansas laws or regulations pertaining to the practice of social work and any such violation which may occur after the effective date of this Order as established after notice and hearing conducted in accordance with the Kansas administrative procedures act shall be considered grounds to revoke the stay of suspension provided in this Order.

8. By November 30, 1992, Kathryn Mackintosh shall reimburse BSRB for the costs of the court reporter at the May 6, 1992 hearing in the amount of \$61.30 and for the costs of the court reporter at the August 5, 1992 hearing in the amount of \$109.75.

IT IS SO ORDERED this 8th day of ~~August~~ ^{SEPTEMBER}, 1992.



Joseph Robb
Chair, BSRB Hearing Panel in
Case No. 349

Notice Regarding Relief From This Order

This is an Initial Order. The party against whom this Initial Order is issued may file a Petition for Review with the full Behavioral Sciences Regulatory Board within fifteen (15)

days after service of this Initial Order. A Petition for Review must state its basis. Unless a later date is stated in this Initial Order, a stay is granted or this Initial Order is reviewed, this Initial Order shall become a Final order without further notice or proceedings thirty (30) days after the date of service, as indicated by the attached Certificate of Service.

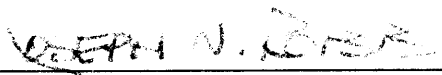
CERTIFICATE OF SERVICE

This is to certify that on the 6TH day of ~~August~~ ^{SEPTEMBER}, 1992 a true and correct copy of the above and foregoing INITIAL ORDER was deposited in the United States mail, first class postage prepaid, to:

J. Charles Droege
Attorney for Kathryn Mackintosh
10990 Quivera, Suite 280
Overland Park, Kansas 66210

and

Terry Hamblin
BSRB Litigation Counsel
Office of the Attorney General
Kansas Judicial Center, 2nd Floor
Topeka, Kansas 66612



Joseph Robb
Chair, BSRB Hearing Panel in
Case No. 349