IN THE SUPREME COURT OF OHIO

State of Ohio, ex rel. James L. McQueen	:	Case No. 2012-0923
Appellant,	:	
v.	:	
The Court of Common Pleas of Cuyahoga County Probate Division	:	On Appeal from the Court of Appeals of Ohio, Eighth Appellate District
Appellee.	:	

MERIT BRIEF OF AMICI CURIAE ADVOCATES FOR BASIC LEGAL EQUALITY, INC., LEGAL AID SOCIETY OF CLEVELAND, LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC, COMMUNITY LEGAL AID SERVICES, INC., OHIO POVERTY LAW CENTER, LLC, LEGAL AID SOCIETY OF COLUMBUS, SOUTHEASTERN OHIO LEGAL SERVICES, LEGAL AID OF WESTERN OHIO, PRO SENIORS, INC., THE ARC OF OHIO, NATIONAL ALLIANCE ON MENTAL ILLNESS OF OHIO, PEOPLE FIRST OF OHIO, AND NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL IN SUPPORT OF APPELLANT JAMES L. MCQUEEN

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

National Conference of Commissioners on Uniform State Laws, *Guardianship and Protective Proceedings Act Summary* (2012), http://uniformlaws.org/ActSummary.aspx?title..... 16
Robert Fleming, *Ward Should Be Allowed to Express Wishes, Hire Counsel*, 12 Legal Issues No. 41 (April 11, 2005) 17, 19
S. Dingfelder, *Mental Health Care: Vulnerable Populations Still Left Behind*, MONITOR ON PSYCHOLOGY, Vol. 40 No. 10 (November 2009) 11 15
Self-Represented Litigants in the Virginia Court System: Enhancing Access to Justice, 7 (2002), available at http://www.docstoc.com/docs/3292738/SelfRepresented-Litigants-in-the-Virginia-Court-System-Enhancing-Access-to# (accessed July 27, 2012) 24
Supreme Court of Ohio, *2007 Ohio Courts Summary*, 125 (2008) 28
Supreme Court of Ohio, *2008 Ohio Courts Statistical Report*, 125 (2009) 29
Supreme Court of Ohio, *2009 Ohio Courts Statistical Report*, 132 (2010) 29
Supreme Court of Ohio, *2010 Ohio Courts Statistical Report*, 130 (2011) 29
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University of Iowa Health Care, *Stroke-Induced Mental Impairments* (2005), http://www.uihealthcare.com/topics/cardiovascularhealth/card3042.html (accessed July 29, 2012) 19

INTEREST OF THE AMICI CURIAE

The Amici Curiae parties include the following: The Arc of Ohio, National Alliance on Mental Illness of Ohio, The People First of Ohio, the National Coalition for a Civil Right to Counsel, Ohio Poverty Law Center, LLC, Southeastern Ohio Legal Services, the Legal Aid Society of Columbus, Advocates for Basic Legal Equality, Inc., the Legal Aid Society of Cleveland, the Legal Aid Society of Southwest Ohio, Community Legal Aid Services, Inc., and Pro Seniors.

The Arc of Ohio, a statewide membership association, advocates for human rights, personal dignity and community participation of individuals with intellectual and developmental disabilities. The National Alliance on Mental Illness ("NAMI") is the nation's largest grassroots mental health organization. NAMI of Ohio is dedicated to improving the quality of life, dignity and respect for persons with serious mental illness and to offering support to their families and close friends. People First of Ohio is a statewide organization that facilitates the establishment of local chapters of persons with disabilities in Ohio who are self-advocates.

The Arc of Ohio, NAMI Ohio and People First of Ohio each represent the interests of individuals with serious mental illness or developmental disabilities. These individuals are among those most affected by guardianship proceedings. Many of them are indigent and thus vulnerable to potential abuses in the guardianship system. These individuals are precisely the population in most need of protection through the appointment of counsel in guardianship termination hearings.

The following legal aid organizations have a particular interest in the outcome of this case because of their frequent representation of low income clients with mental impairments or other mental health issues and their history of collaboration with community mental health

centers, fair housing programs, and disability advocacy organizations. Legal Aid organizations in Ohio also have a longstanding interest in issues concerning the right to appointed counsel for indigent parties. For example, Southeastern Ohio Legal Services represented the relator in the landmark case of *State ex rel. Asberry v. Payne*, 82 Ohio St. 3d 44, 693 N.W. 2d 794 (1998), and the Ohio Legal Assistance Foundation filed an amicus curiae brief with the Supreme Court of Ohio in support of the relator in *Asberry*.

Advocates for Basic Legal Equality, Inc. (ABLE) is a nonprofit civil legal service provider with the mission of providing high quality legal assistance to low-income persons in 32 counties in northwest and west central Ohio.

The Legal Aid Society of Cleveland is the law firm for low-income families in northeast Ohio. Its mission is to secure justice and resolve fundamental problems for those who are low-income and vulnerable by providing high quality legal services and working for systemic solutions that empower those it serves.

The Legal Aid Society of Southwest Ohio, LLC, an affiliate of the Legal Aid Society of Greater Cincinnati, provides a broad range of civil legal services to low-income persons in southwest Ohio.

Community Legal Aid Services, Inc. (CLAS) provides legal representation to low-income and elderly individuals in an eight-county area in northeast Ohio. The mission of CLAS is to secure justice for and protect the rights of the poor and to promote measures for their assistance.

Legal Aid of Western Ohio, Inc. (LAWO) is a non-profit regional law firm that provides high quality legal assistance in civil matters to help eligible low-income individuals and groups in western Ohio achieve self-reliance, and equal justice and economic opportunity.

The Ohio Poverty Law Center is a nonprofit law office that pursues statewide policy and systemic advocacy to expand, protect, and enforce the legal rights of low-income Ohioans. Among other things, the Ohio Poverty Law Center seeks to right the stigmatization and exploitation of, and discrimination against, low-income and vulnerable Ohioans.

The Legal Aid Society of Columbus represents low-income persons and seniors with legal problems in a variety of areas, including housing, consumer, public benefits, and domestic relations in a six-county area of central Ohio. Over the past decade the Legal Aid Society has represented clients with disabilities in over seven thousand cases and has assisted clients with over one hundred guardianship proceedings, including defense of petitions for involuntary guardianship.

Southeastern Ohio Legal Services serves the low-income people of thirty of the most chronically poor and isolated counties of central and Appalachian Ohio. It has extensive experience seeing the impact being unrepresented in court has on litigants, especially the less educated, less sophisticated, lower functioning, and mentally ill and advocating for their need for representation to ensure meaningful access to the court. *See State ex rel. Asberry v. Payne*, 82 Ohio St. 3d 44, 693 N.E.2d 794 (1998); *Wright v. Smith*, 4th Dist. No. 1475, 1989 WL 4284 (Jan. 19, 1989); *Strizak v. Strizak*, 7th Dist. No. 11 CA 872, 2012-Ohio-2367.

Pro Seniors, Inc. is a nonprofit civil legal service provider with the mission of providing legal assistance to seniors in southwest Ohio, as well as legal advice to any senior statewide.

The National Coalition for a Civil Right to Counsel (NCCRC) is an unincorporated association formed in 2004 that seeks to advance the recognition of a right to counsel in civil cases involving fundamental interests and basic human needs, such as shelter, safety, sustenance, health, and child custody. NCCRC is comprised of over 240 participants from 35 states,

including civil legal services attorneys, supporters from public interest law firms, and members of the private bar, academy, state/local bar associations, access to justice commissions, national organizations and others. NCCRC supports litigation, legislation and other advocacy strategies seeking a civil right to counsel, including amicus briefing where appropriate. In this vein, NCCRC participants worked closely with the American Bar Association's Presidential Task Force on Access to Justice on its 2006 Resolution (which passed the ABA House of Delegates on a unanimous vote) that urges federal, state and territorial governments to recognize a right to counsel in certain civil cases.[1] By promoting such a civil right to counsel, NCCRC works tirelessly to try to close the "justice gap" in the United States that has grown to the point where less than 20 percent of the legal needs of poor people are addressed.[2]

It is important to emphasize that the Amici Curiae do not take a position in this case on the merits of whether the Relator McQueen should in fact be entitled to terminate the guardianship and leave the nursing home as he desires. The Amici Curiae parties instead vigorously assert that McQueen has the statutory right to counsel to represent him at a hearing in which that determination is made. A denial of counsel to McQueen at the review hearing essentially denies him the opportunity to make a full and fair presentation. If McQueen is entitled to termination of the guardianship, he should have the right through counsel to present those facts and advocate his position.

STATEMENT OF FACTS AND CASE

[1] American Bar Association Resolution 112A (Aug. 2006), available at http://www2.americanbar.org/sdl/Documents/2006_AM_112A.pdf.

[2] Legal Services Corporation, *Documenting the Justice Gap In America: The Current Unmet Civil Legal Needs of Low-Income Americans* (Sept. 2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf. .

In the interests of judicial economy, Amici adopt by reference the Statement of Facts and Case submitted by Appellant James L. McQueen.

ARGUMENT

Proposition of Law: An indigent ward who alleges competency and who requests a guardianship review hearing is entitled to appointed counsel pursuant to R.C. 2111.02 and R.C. 2111.49 (C).

I. Appellant McQueen Has a Statutory Right to Appointed Counsel in a Hearing to Determine Termination of Guardianship.

McQueen had a statutory right to an appointed attorney at the initial hearing to determine guardianship. After being confined to a nursing home for two years, he now believes his mental illness is controlled and requests that his guardianship be terminated. McQueen likewise has a statutory right to appointed counsel to determine the termination of guardianship.

R.C. 2111.02 establishes the procedures for the appointment of a guardian for an alleged "incompetent" person and the due process rights of that person. R.C. 2111.02 (C) provides that the court shall conduct a hearing prior to the appointment of a guardian in accordance with several enumerated requirements, one of which is the right to counsel appointed at the Court's expense if the alleged incompetent is indigent. R.C. 2111.02 (C)(7) states in pertinent part:

> (C) Prior to the appointment of a guardian or limited guardian under division (A) or (B)(1) of this section, the court shall conduct a hearing on the matter of the appointment. The hearing shall be conducted in accordance with all of the following:
>
> * * *
>
> (7) If the hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent, the alleged incompetent has all of the following rights:
>
> * * *

> (d) If the alleged incompetent is indigent, upon the alleged incompetent's request:
>
> (i) The right to have counsel and an independent expert evaluator appointed at the court's expense. (Emphasis added).

Ohio statutes further provide a procedure whereby a ward has the right to challenge the continued necessity of a guardianship, in this case alleging return to competence. R.C. 2111.49 states that "a hearing shall be held in accordance with Section 2111.02 of the Revised Code to evaluate the continued necessity of the guardianship." R.C. 2111.49(C) states in pertinent part:

> (C) Except as provided in this division, for any guardianship, upon written request by the ward, the ward's attorney, or any other interested party made at any time after the expiration of one hundred twenty days from the date of the original appointment of the guardian, a hearing shall be held in accordance with Section 2111.02 of the Revised Code to evaluate the continued necessity of the guardianship. (Emphasis added).

By explicitly incorporating the due process rights enumerated in R.C. 2111.02 and R.C. 2111.49 establishes the right to appointed counsel in a hearing to determine the continuation of the guardianship, just as that right exists for the initial appointment hearing.

R.C. 2111.02 and 2111.49 should be read *in pari materia*, as conceded by Respondent. In *State ex rel. Asberry v. Payne,* Asberry claimed she was entitled to appointed counsel in her juvenile court custody proceeding pursuant to R.C. 2151.352, which incorporated the right to counsel by reference to Chapter 120 of the Revised Code. *State ex rel. Asberry v. Payne*, 82 Ohio St. 3d 44, 46, 693 N.E.2d 794 (1998). In upholding the right to counsel, this Court stated that the two statutes, R.C. 2151.352 and R.C. Chapter 120, should be read *in pari materia* and that R.C. 2152.352 incorporates the statutory procedures of R.C. Chapter 120 to provide appointed counsel. *Id*. at 47. Respondent urges that this case is not persuasive because R.C.

2152.352 was subsequently amended. But the later amendment of the statute certainly does not alter or limit the reasoning of the Court.

In *In re Davis*, the Court again addressed the interpretation of an incorporating statute. *In re Davis*, 84 Ohio St. 3d 520, 521–522, 705 N.E.2d 1219 (1999). R.C. 2151.414 (A) provided that where a motion for permanent child custody is filed, "[t]he Court shall conduct a hearing in accordance with R.C. 2151.35." This Court held that judgment must be entered within seven days of such hearing because R.C. 2151.35 so required, stating:

> Because R.C. 2151.35 (B)(3) required a decision within seven days following the conclusion of a dispositional hearing, judges ruling on R.C. 2151.414 permanent custody motions must meet that time limit where the motion was filed prior to the September 18, 1996 amendment to R.C. 2151.414. *In re Davis* at 522.

In both *Asberry* and *Davis*, this Court interpreted the statutes by applying the requirements of the separate incorporated statute. In this case, R.C. 2111.49 (C) mandates that the guardianship review "hearing shall be held in accordance with Section 2111.02 of the Revised Code." This incorporation by reference does not permit the Respondent to choose selectively only those due process provisions it likes. Instead, the Probate Court is compelled to conduct the hearing in all respects in accordance with Section 2111.02.

Respondent argues that the R.C. Section 2111.49 (C) review hearing does not incorporate the right to appointed counsel, reasoning that the language of Section 2111.02 (C)(7) explicitly limits the right to appointed counsel only to the initial appointment hearing for an alleged incompetent. Indeed, R.C. 2111.02(C)(7)(d)(i) does state that "if the hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent," an indigent ward has the right to appointed counsel. But this reasoning is nonsensical. It is obvious that R.C. Section 2111.49(C) applies to review hearings and that R.C. Section 2111.02, the statute incorporated,

addresses the original appointment hearing. But the only logical meaning of Section 2111.49(C) is that the due process rights in the appointment hearing necessarily apply in the review hearing. R.C. Section 2111.02 applies broadly to the appointment of guardians for both minors and those deemed incompetent. R.C. 2111.02(A). The statute then provides more robust hearing rights with respect to the appointment of guardians for alleged incompetents. Hence, R.C. Section 2111.02(C)(7) makes explicit provision for the appointment of counsel for those alleged incompetent as distinct from minors, who are not offered that right. The same rights are necessarily incorporated into the review hearing.

Respondent asserts that if McQueen's position were to prevail, guardianship review hearings would be converted into adversarial court proceedings. It characterizes these hearings as a "gentle inquiry into the ward's current status and the issues that give rise to the request for review." Respondent's Brief to Show Cause Why Counsel Should Not Be Appointed in Compliance With Alternative Writ Issues, January 20, 2012, at 13. If the hearing is limited to a mere review of the ward's current status, such a "gentle inquiry" may be appropriate. But here, where McQueen has asserted that he has been restored to competency and desires termination of the guardian, he is entitled to the very right which the statute provides, the right to an appointed counsel. The serious liberty interests at stake and the characterization of guardianship review proceedings as "gentle" are, in cases such as McQueen's, incompatible. Indeed, the State acknowledges that in such circumstances, the Probate Court typically requires the guardian to provide an updated medical evaluation from a qualified professional. Affidavit of David M. Mills, Magistrate and Guardianship Director with the Cuyahoga County Court of Common Pleas, Exhibit D to Respondent's Brief Show Cause. That is an important component of the review hearing. The statute provides for both an independent medical report and an attorney appointed

at Court expense at the appointment hearing. R.C. 2111.02 (C)(7)(d)(i). Both are integral to the hearing required in "accordance with Section 2111.02 of the Revised Code." The State recognizes one prong of its requirement for indigents in the review hearing. McQueen now seeks relief from this Court to implement the second prong, the right to appointed counsel.

II. Other States With Statutes Similar to Ohio Have Established the Right to Appointed Counsel in a Guardianship Review Hearing.

Many states have enacted statutory provisions similar to the Ohio statutes which establish a right to appointed counsel in the initial guardianship hearing and then reaffirm the same right in the guardianship review hearing by an incorporating reference. These other states likely modeled their statutes on the Uniform Probate Code, which adopted a similar structure.

Since 1982, the Uniform Probate Code ("UPC") has provided an explicit right to appointed counsel in the initial determination of a guardian for an incapacitated person. UPC 5-305 states in pertinent part as follows:

> (a) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and appoint a [visitor]. The duties and reporting requirements of the [visitor] are limited to the relief requested in the petition. The [visitor] must be an individual having training or experience in the type of incapacity alleged.
>
> **Alternative A**
>
> (b) The court shall appoint a lawyer to represent the respondent in the proceeding if:
>
> (1) requested by the respondent;
> (2) recommended by the [visitor]; or
> (3) the court determines that the respondent needs representation.

Alternative B

> (b) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to represent the respondent in the proceedings, regardless of the respondent's ability to pay.[3]

The 1997 version of the Uniform Guardianship and Protective Proceedings Act, now codified at Uniform Probate Code 5-318, also provided for the same right to appointed counsel in guardianship termination proceedings by language incorporating the procedural requirements of the original appointment hearing as follows:

> (c) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship. Upon presentation by the petition of the evidence establishing a prima facie case for termination, the court shall order the termination unless it is proven that continuation of the guardianship is in the best interest of the ward. (Emphasis added).

The comments to Uniform Probate Code 5-318 make explicit that the provision which requires the court to "follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship" means exactly what it says, including the appointment of counsel:

> Subsection (c) requires the court in terminating a guardianship to follow the same procedures to safeguard the ward's rights as apply to a petitioner

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[3] In 1982, the Uniform Guardianship and Protective Proceedings Act ("UGPPA"), as a part of the Uniform Probate Code, stated in pertinent part at 5-303 (Uniform Probate Code 5-303) as follows:

> (a) An incapacitated person or any person interested in the welfare of the incapacitated person may petition for appointment of a guardian, limited or general.
>
> (b) After the filing of a petition, the Court shall set a date for hearing on the issue of incapacity so that notices may be given as required by Section 5-304, and, unless the allegedly incapacitated person is represented by counsel, appoint an attorney to represent the person in the proceedings.

In 1997, the UGPPA was amended at Uniform Probate Code 5-305 to provide the alternative statutes as stated above.

> for appointment of a guardian. This includes the appointment of a visitor and, in appropriate circumstances, counsel.

Although Ohio has not adopted the UPC, the statutory structure for the appointment of counsel is identical in both the UPC and the Ohio statutes—the explicit right in the initial determination of guardianship (R.C. 2111.02 and UPC 5-305) and the continuation of that right in the hearing to evaluate the termination of guardianship by incorporating the procedural safeguards established in the appointment hearing (R.C. 2111.49 (C) and UPC 5-318).

Jurisdictions adopting statutory schemes similar to the UPC have incorporated the right to appointed counsel from their respective appointment statutes into their termination statutes. *See, e.g., In Re Guardianship of Williams*, 159 N.H. 318, 329, 986 A.2d 559, 567 (2009). In *In Re Guardianship of Williams*, the Supreme Court of New Hampshire explained that state's termination of guardianship statute—N.H. Rev. Stat. Ann. 464-A:40, II(c)—which provides: "the court shall hold a hearing similar to that provided for in N.H. Rev. Stat. Ann. 464-A:8 and N.H. Rev. Stat. Ann. 464-A:9" (emphasis added). While neither N.H. Rev. Stat. Ann. 464-A:8 or N.H. Rev. Stat. Ann. 464-A:9 explicitly state the right to appointed counsel in the termination hearing, the Supreme Court of New Hampshire interpreted this language to incorporate the right to appointed counsel provided in appointment hearings[4], stating as follows:

> [P]rovides for broad standing to commence proceedings designed to protect the ward by removing limitations on the ward's rights. At the termination hearing, conducted in a manner similar to that of the guardianship hearing and with the ward's rights protected by counsel, the burden is on the guardian to prove that the grounds for the appointment of the guardian continue to exist, *see* RSA 464-A:40, II(c)." 159 N.H. at 329. (Emphasis added).

[4] N.H. Rev. Stat. Ann. 464-A:6 provides that "the court shall appoint counsel for the proposed ward immediately upon the filing of a petition for guardianship."

Likewise, Minnesota's appointment of guardian statute, Minn. Stat. Ann. 524.5-304(b) provides: "[t]he court shall appoint counsel to represent the proposed ward for the initial proceeding," while its termination of guardianship statute, similar to the UPC, provides that "the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship." (Emphasis added). Minn. Stat. Ann. 524.5-304(b); 524.5-317(b). In *Greer v. Prof'l Fiduciary, Inc.*, 792 N.W.2d 120, 127-28 (Minn. Ct. App. 2011), the Minnesota court explained that a ward is guaranteed the right to appointed counsel in termination or modification hearings held under Minn. Stat. Ann. 524.5–317(b), pursuant to Minn. Stat. Ann. 524.5-304(b), stating in pertinent part:

> In fact, the conservatorship and guardianship statutes contain numerous provisions to ensure that incapacitated persons are informed of, and may participate in, the proceedings. . . Both the conservatorship and guardianship statutes also guarantee incapacitated persons the right to counsel in these proceedings . . . Incapacitated persons have frequently invoked these rights to challenge the conduct of their conservators and guardians in the probate court. (Emphasis added).

Twelve states plus the District of Columbia have followed, or drafted their guardianship statutes in similar fashion to, the UPC's termination statute—demonstrating that they provide the right to appointed counsel pursuant to the incorporation language.[5] Likewise, 16 jurisdictions have gone a step further and explicitly provided the right to appointed counsel within their

[5] These jurisdictions include: Alabama (Ala. Code 26-2A-110); Colorado (Colo. Rev. Stat. 15-14-318); Hawaii (Haw. Rev. Stat. 560:5-318); Louisiana (La. Code Civ. Proc. Ann. art. 4554); Maine (Me. Rev. Stat. Ann. tit. 18-A 5-307; *Guardianship of Lander*, 697 A.2d 1298 (Me 1977) ("same procedures" language means all procedures from guardianship establishment proceeding); Massachusetts (Mass. Gen. Laws Ann. A 190B 5-311); Minnesota (Minn. Stat. Ann. 524.5-317); Montana (Mont. Code Ann. 72-5-315); New Hampshire (N.H. Rev. Stat. Ann. 464-A:40); New Mexico (N.M. Stat. Ann. 45-5-303); Tennessee (Tenn. Code Ann. 34-3-108); Utah (Utah Code Ann. 75-5-307); and the District of Columbia (D.C. Code Ann. 21-2049).

respective termination proceeding statutes.[6] In all, excluding Ohio, there are 28 jurisdictions that require the right to appointed counsel in termination proceedings, either explicitly within the statute or by incorporating the right from their appointment statutes. Meanwhile, seven states provide the right to appointed counsel in termination proceedings on a discretionary basis.[7]

Ohio's review hearing statute contains the same incorporating elements as the UPC and the statutes of other states which provide the right to appointed counsel and, as a result, should be interpreted in the same fashion.

In addition to Ohio's guardianship review hearing statute, Ohio statutes provide the right to appointed counsel through incorporation language in a hearing regarding the review of continued civil commitment.[8] R.C. 5122.15(H) provides, in pertinent part:

> Upon request of a person who is involuntarily committed under this section, or the person's counsel, that is made more than one hundred eighty days after the person's last full hearing, mandatory or requested, the court shall hold a full hearing on the person's continued commitment.

The requirements of a "full hearing" are enumerated in R.C. 5122.15(A), which states in pertinent part:

> (A) Full hearings shall be conducted in a manner consistent with this chapter and with due process of law. The hearings shall be conducted by a judge of the probate court or a referee designated by a judge of the probate

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[6] These jurisdictions include: California (Cal. Pub. Cont. 1471(a)(2)); Connecticut (Conn. Gen. Stat. Ann. 45a-681); Florida (Fla. Stat. 744.464); Georgia (Ga. Code Ann. 29-4-42); Illinois (755 Ill. Comp. Stat. 5/11a-21); Louisiana (La. Code Civ. Proc. Ann. art. 4554); Maryland (MD Code, Estates and Trusts, 13-705(d)); Michigan (Mich. Comp. Laws 5.408); Missouri (Mo. Rev. Stat. 475.083); New York (N.Y. Mental Hyg. Law 81.10(c)(1)); Oklahoma (Okla. Stat. Ann., tit. 30, 3-106); Pennsylvania (when ward is in mental hospital, pursuant to 204 Pa. Code 29.41) (20 Pa. Cons. Stat. Ann. 5512.2); Texas (Tex. Probate Code Ann. 694C); Vermont (Vt. Stat. Ann., tit. 14, 3065(a)(1)(B)); West Virginia (W. Va. Code 44A-4-6); and Wisconsin (Wis. Stat. 54.64).

[7] These jurisdictions include: Indiana (Ind. Code 29-3-5-1); Iowa (Iowa Code Ann. 633.51); Kansas (Kan.Stat.Ann. 59-3090); Montana (Mont. Code Ann. 72-5-325); Nevada (Nev. Rev. Stat. 159.1905); Oregon (Or. Rev. Stat. 125.080); and South Dakota (S.D. Codified Laws 29A-5-508).

[8] Similar to the situation where a guardian is appointed for a person deemed incompetent, an individual can be voluntarily or involuntarily committed if a court finds that the person is mentally ill and poses harm to him or herself and others. R.C. 5122.01.

> court and may be conducted in or out of the county in which the respondent is held. Any referee designated under this division shall be an attorney.
>
> * * *
>
> (4) The respondent shall be informed that the respondent may retain counsel and have independent expert evaluation. If the respondent is unable to obtain an attorney, the respondent shall be represented by court-appointed counsel. If the respondent is indigent, court-appointed counsel and independent expert evaluation shall be provided as an expense under section 5122.43 of the Revised Code. (Emphasis Added).

While R.C. 5122.15(H) does not explicitly provide for the right to appointed counsel in continued commitment proceedings, Ohio courts have held that all of the requirements of a full hearing from R.C. 5122.15(A) are incorporated into the continued commitment proceedings by virtue of the incorporation language. *See, e.g., In re Jones*, 10th Dist. No.80AP-153, 1980 WL 353779, at *2 (Nov. 4, 1980) (holding that an individual is entitled to a full hearing, as defined in R.C. 5122.15(A), on the issue of continued commitment); *see also In re Kuehne*, 12th Dist. No. CA98-09-192, 1999 WL 527755, at *9 (July 6, 1999) ("a hearing regarding an application for continued commitment is, in essence, a de novo hearing which must be conducted in accordance with R.C. Chapter 5122").

In both guardianship and civil commitment proceedings, the ward is stripped of his liberty until he is determined mentally capable of caring for himself. *See, e.g., Goss v. Fiorini*, 108 Ohio St. 115 (1923) (an adjudicated incompetent's contracts are void). The focus of both proceedings is to deprive an individual of his freedom based on the individual's mental incapacity. Further, that deprivation should only continue so long as the incapacity continues. Thus, the right to counsel is necessary for the incompetent in both proceedings.

Just as the statutory due process rights in initial commitment proceedings–enumerated in R.C. 5122-5122.15(A)–have been incorporated into continued commitment proceedings under R.C. 5122.15(H), the due process rights enumerated in R.C. 2111.02 (A) must be incorporated into review hearings under R.C. 2111.49 (C).

III. Public Policy Strongly Favors Appointment of Counsel for Indigent Ohioans Subject to Guardianship Because They Comprise an Especially Vulnerable Segment of the Population.

Guardianship review cases affect the health, safety, and liberty of an especially vulnerable population. People subject to guardianship are dealing with serious mental illnesses or disabilities, and also with a long history of discrimination and a denial of their basic due process rights. Even as recently as the 1960s, it was very easy for people with mental illness and developmental disabilities in the United States to be "committed" to secure facilities with relatively little procedure or focus on their rights or their humanity. *See* A. Frank Johns, *Ten Years After: Where is the Constitutional Crisis with Procedural Safeguards and Due Process in Guardianship Adjudication?*, 7 Elder L.J. 33, 52–58 (1999). Although mental health care is improving for most Americans, it may be declining for people with debilitating mental illnesses. S. Dingfelder, *Mental Health Care: Vulnerable Populations Still Left Behind*, MONITOR ON PSYCHOLOGY, Vol. 40 No. 10 (November 2009) 11. As the Ohio statute defines it, "incompetent" individuals subject to guardianship under R.C. 2101, *et seq.*, are "so mentally impaired as a result of a mental or physical illness or disability… that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family…" R.C. 2111.01(D).

"Vulnerability is cumulative over the life course." David Mechanic & Jennifer Tanner, *Vulnerable People, Groups, and Populations: Societal View,* 26 Health Affairs No. 5 (2007) 1220. Factors most likely to lead to vulnerability—that is, susceptibility of harm—include poverty, race, lack of social support, physical and cognitive impairments, and illness. *Id*. at 1224. In guardianship review cases such as the case at issue here, the determination has already been made that the ward is, or was at one time, incompetent under the standard set forth in R.C. 2111.01(D). Moreover, in cases, as here, where the ward at issue is indigent—that is, "an individual who at the time of his need is determined is unable to provide the payment of an attorney"—the vulnerability of the ward is heightened due to his lack of resources to fight his previous designation as incompetent. R.C. 120.03.

The consensus has long been that this especially vulnerable population is entitled to special procedural protections before their ability to control their own lives may be taken away from them and put in the hands of a guardian. As early as 1987, the American Bar Association, recognizing the particular vulnerability of individuals in these circumstances, adopted a policy calling for a right to counsel in guardianship and conservatorship cases. American Bar Association Commission on Legal Problems of the Elderly, 112 No. 2 Annu. Rep. A.B.A. 31 (1987). Moreover, as mentioned above, in 1997, the Uniform Guardianship and Protective Proceedings Act was amended to, among other things, strengthen its right to counsel for people in guardianship cases, recommending that states either provide appointment of counsel for people subject to guardianship on request or as a mandatory matter in <u>every</u> guardianship and conservatorship proceeding. *See* National Conference of Commissioners on Uniform State Laws, *Guardianship and Protective Proceedings Act Summary* (2012), http://uniformlaws.org/ActSummary.aspx?title

=Guardianship%20and%20Protective%20Proceedings%20Act (accessed July 29, 2012).

There are good reasons for these recommendations; stories of wards being victimized by their guardians are ubiquitous. *See, e.g.*, James Eli Shiffer, *Feb. 15: 2 Years and $672,808 Gone*, Star Tribune (Feb. 16, 2009) West Metro 1 (describing how an 85-year-old woman's guardian and conservator stole over $600,000 from her). Often wards cannot escape from the control of guardians without the help of an attorney. *See, e.g.*, Robert Fleming, *Ward Should Be Allowed to Express Wishes, Hire Counsel*, 12 Legal Issues No. 41 (April 11, 2005). This is not to say that all guardians act improperly, but it does highlight how vulnerable wards are in the guardianship relationship and how difficult it can be for them to reverse the situation once it exists.

"Incompetent" wards with a history of serious mental impairments face special barriers to effective self-representation. Thus, to read R.C. 2111.02 and 2111.49 to say that the individuals who comprise this vulnerable population, once committed and denied the right to control their own lives, liberty, and property, should thereafter be denied access to the counsel who could help them establish their renewed or revived competence and ability to resume control over their lives is cruel, inhumane, and inconsistent with at least 50 years of American public policy. In essence, this would mean that a prior determination of incompetency is permanent, notwithstanding the guardianship review proceeding, since a ward without counsel will stand little chance of reversing the prior finding of incompetency. The Ohio statutory protections exist because the population they seek to protect is, by definition, incapable of defending itself.

IV. <u>There Is an Equal Necessity for Appointment of Counsel for Indigent Parties in Initial Guardianship and Guardianship Review Hearings</u>.

In 1987, in issuing its Recommended Judicial Practices to protect the rights of the alleged incompetent in guardianship hearings, the American Bar Association (ABA) recognized that

individuals subject to an adjudication of incompetence and the loss of control of their lives, liberty and property, were entitled to assistance in investigating and challenging the allegation of their incompetence. *See* American Bar Association Commission on Legal Problems of the Elderly, 112 No. 2 Annu. Rep. A.B.A. 31 (1987). The medical evidence often necessary to establish the need for a guardian to manage an incompetent individual's affairs may be far too complex for that individual to challenge effectively on a pro se basis, especially given the vulnerability and alleged mental incompetence of the individual at issue. This is why Ohio law requires that an attorney be provided to alleged incompetents prior to the hearing that would commit them. R.C. 2111.02 (C)(7). But the same complicated medical evidence will likely be necessary if that ward seeks later to have the declaration of incompetency removed and the guardianship terminated in a review hearing. A ward that could not understand and effectively challenge such evidence during the initial hearing may be no better suited to find and present evidence of his or her alleged restored competence later. *See* Craig Hopper, *Guardianship*, Chapter 10, Modification and Restoration of Guardianships 1 (2003) (describing cases that illustrate the struggles and legal complications for wards who want to restore or modify their rights after being subject to guardianships).

Despite the fact that the burden of proving incompetence by clear and convincing evidence remains on the guardian or applicant for guardianship even in guardianship review hearings, the ward still faces an uphill battle. R.C. 2111.49 (C). The ward is at a great disadvantage if he or she does not have an attorney, especially if the guardian opposes his or her claim of competency. *See, e.g.*, Denise McClure, *Don't Be Afraid to See What You* See, Detroit Legal News (May 9, 2012), http://www.legalnews.com/Detroit/1317983/ (describing the case of a trusted guardian and conservator who managed the affairs of minors and incompetent adults for

over 30 years while stealing over $2 million of his wards' money); Robert Fleming, *Ward Should Be Allowed to Express Wishes, Hire Counsel*, 12 Legal Issues No. 41 (April 11, 2005). The stakes are too high, and the issues far too complicated, to leave vulnerable wards without the assistance of needed counsel in guardianship review hearings.

Wards that have been adjudicated incompetent do not lose their interest in their personal autonomy and ability to make decisions on their own behalf upon entering a guardianship relationship. Wards sometimes regain their mental faculties and, when they do, they have a strong interest in restoring their capacity for independent decision making. The stories of stroke victims, for example, recovering their mental faculties through rehabilitation demonstrates that such recovery is possible. *See* University of Iowa Health Care, *Stroke-Induced Mental Impairments* (2005), http://www.uihealthcare.com/topics/cardiovascularhealth/card3042.html (accessed July 29, 2012)(noting that although damaged brain cells cannot be replaced, some of the problems associated with strokes are caused by swollen brain cells, which comes back to normal when those cells recover). Moreover, the harm to wards that regain their mental faculties and thereafter cannot challenge their status can be very high. In the instant case, for example, McQueen was placed in a locked facility that he cannot leave without his guardian's permission or an order terminating his ward status. Thus, the stakes in his guardianship review hearing are very high and the risk of harm to him if he is not appointed counsel is extreme.

Ohio law makes imposing a guardianship on an individual difficult for good reason, and supplies due process rights, including a right to counsel at public expense, to alleged incompetents to help avoid improper denial of people's rights to health, safety, liberty and property. R.C. 2111.02. Given the inherent complexity of these cases and the disadvantages wards suffer as a result of their previous finding of incompetence, public policy would not be

well served by finding that wards in review proceedings cannot access the procedural rights they had at the outset of their cases. Public policy is also not well served by keeping individuals whose competency has been restored in restrictive guardianship situations. Ohio law must be read to extend procedural rights to wards both before they enter–and as they seek to exit–the guardianship system.

V. Failure to Appoint Counsel for Indigent Parties in Guardianship Review Hearings has a Negative Impact on the Court System.

In April 2006, the Supreme Court of Ohio's Task Force on Pro Se and Indigent Litigants published findings that pro se litigants pose a huge challenge for the courts. Task Force on Pro Se and Indigent Litigants, *Report and Recommendation of the Supreme Court Task Force on Pro Se and Indigent Litigants*, 1 (2006). "[O]ur courts are overwhelmed with a flood of pro se litigants, who represent as much as eighty percent of the caseloads." Justice Earl Johnson, Jr., *"And Justice for All": When Will the Pledge be Fulfilled?*, 47 Judges' J. 5, 7 (2008). Pro se litigants neglect court and statutory deadlines and have a difficult time grasping the law and rules of the court. Beverly W. Snukals and Glen H. Sturtevant, Jr., *Pro Se Litigation: Best Practices from a Judge's Perspective*, 42 U. Rich. L. Rev. 93 (2007) (citing Drew A. Swank, Comment, *The Pro Se Phenomenon* 19 B.Y.U. J. Pub. L. 384 (2005) (quoting Tiffany Boxton, Note, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34. Case W. Res. J. Int'l. L. 114 (2002))).

Typical pro se litigants fail "to present necessary evidence, suffer from procedural error, are ineffective when examining witnesses, and fail to properly object to evidence." ABA Coalition for Justice, *Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts*, 11 (2010). *See also* Johnson, 47 Judges' J. at 5. In a 2010 survey by the American Bar Association's Coalition for Justice of 1,176 judges, in which 986

judges completed the survey,[9] 94% of judges said that failing to present necessary evidence was the most common problem for a pro se person. ABA Coalition for Justice at 4. Eighty-nine percent of judges "said that [unrepresented] parties were impacted by procedural errors." *Id.* Eight-five percent of judges said that unrepresented parties were ineffective at examining witnesses. *Id*. Pro se parties may even argue with witnesses and call them liars. Jona Goldschmidt, *How Are Courts Handling Pro Se Litigants?* 82 Judicature 18 (1998). Eighty-one percent of judges said that unrepresented parties failed to properly object to evidence. ABA Coalition for Justice at 4. Seventy-seven percent of judges surveyed said that unrepresented parties made ineffective arguments. *Id*. They "do not provide legal research or support for their positions; they fail to prepare judgments and orders, or prepare orders that are improper or unenforceable." *Id*. at 12; *see also* Snukals and Sturtevant, 42 U. Rich. L. Rev. at 96; Goldschmidt, 82 Judicature at 18.[10] These issues affect not only the unrepresented party and the court, but they also affect the other party, the court staff, lawyers, and the court system as a whole, by impacting the efficiency and speed of the court. Snukals and Sturtevant, 42 U. Rich. L. Rev. at 96.

Seventy-eight percent of the judges surveyed stated that the court was negatively impacted when parties were unrepresented or not well represented because, according to 90% of the judges surveyed, these parties slow down the court procedure. ABA Coalition for Justice at 4, 12. Fifty-six percent of the courts surveyed said that they were seeing an increase in requests

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[9] The judges were from 37 states, Puerto Rico, and one Native American court. ABA Coalition for Justice at 7. Forty-one percent of the judges surveyed were from urban areas. *Id*. at 8. The national population is 79% metropolitan, and 69% of the judges surveyed were from metropolitan areas. *Id*.

[10] "The judge survey was sent by mail to 612 judges non-randomly chosen from among all state court judges at all levels of court in urban, rural, and suburban jurisdictions. Of the surveys mailed, 133 (22 percent) were completed and returned. Another mailed survey was sent to a sample of 237 court administrators in all levels of state trial courts who are members of the National Association for Court Management. Of these, 98 (41 percent) were returned." Goldschmidt, 82 Judicature at 22.

for court appointed counsel. *Id*. at 14. When the judges were asked how the courts could be more efficient, eighty-six percent responded that it could be accomplished if both parties were represented. *Id*.

An adult person, such as McQueen, who is appointed a guardian, is first adjudicated to be an incompetent. An incompetent is defined under R.C. 2111.01 (D) as:

> …any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within this state.

A ward, such as McQueen, who is representing himself or herself in court, is sure to slow down the court process and to negatively impact the court even more significantly than the average pro se litigant. The Supreme Court of Ohio's Task Force on Pro Se and Indigent Litigants found that individuals with disabilities, including mental illness, may not benefit from pro se support, and "should be considered for full representation…." Task Force on Pro Se and Indigent Litigants at 23. In order for the impact of unrepresented parties in guardianship review hearings on the court to be minimized, it would be logical for the court to appoint counsel, so that the court can have effective and efficient hearings.

A. **Impact on Judges.**

"[J]udges suffer more than anyone other than the parties when litigants lack counsel." Johnson, 47 Judges' J. at 5.

> Judges depend on parties to present relevant evidence and focused legal arguments. Without assistance from attorneys, *pro se* litigants frequently fail to present critical facts and legal authorities that judges need to make correct rulings. Pro se litigants also frequently fail to object to inadmissible testimony or documents and to counter erroneous legal arguments. This makes it difficult for judges to fulfill the purpose of our justice system—to make correct and just

> rulings. *King v. King*, 162 Wash. 2d 378 (2007), Amicus Brief of Retired Trial Judges at 12 (Emphasis sic).

Because of these issues, judges often guide pro se parties through the process, but doing so comes with its own set of issues. Judges face an even greater challenge when litigants are mentally ill or otherwise vulnerable.

Canon 1 of the Code of Judicial Conduct states that "[a] judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." (Emphasis sic). Jud. Cond. R.1.2, entitled Promoting confidence in the judiciary, further states that "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." (Emphasis sic).

Canon 2 of the Code of Judicial Conduct states that "[a] judge shall perform the duties of judicial office impartially, competently, and diligently." (Emphasis sic). Jud. Cond. R.2.2, entitled Impartiality and fairness, further states that "[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." (Emphasis sic).

In juxtaposition to these Canons and Codes is Jud. Cond. R.2.6(A), entitled *Ensuring the right to be heard*, which states that "[a] judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." Official Comment [1A] to Jud. Cond. R.2.6 expands this even further by stating that:

> The rapid growth in litigation involving self-represented litigants and increasing awareness of the significance of the role of the courts in promoting access to justice have led to additional flexibility by judges and other court officials in order to facilitate a self-represented litigant's ability to be heard. By way of illustration, individual judges have found the following affirmative, nonprejudicial steps helpful in this regard: (1) providing brief information about the proceeding and evidentiary and foundational requirements;
> (2) modifying the traditional order of taking evidence; (3) refraining from using legal jargon; (4) explaining the basis for a ruling; and (5) making

> referrals to any resources available to assist the litigant in the preparation of the case.

It is a difficult task for judges to balance the appearance of impartiality while helping one of the parties present his or her case. Goldschmidt, 82 Judicature at 16. Forty-two percent of the judges surveyed by the ABA were concerned about compromising the impartiality of the court in order to prevent injustice, such as by acting in place of an attorney for the unrepresented party. ABA Coalition for Justice at 4, 13. In a survey done by the American Judicature Society/Justice Management Institute, many judges "cited the ethical duty of maintaining judicial impartiality as the primary problem in cases where one party appears pro se." Goldschmidt, 82 Judicature at 17.

A helpful judge may explain the legal process, why a particular question is irrelevant or hearsay, and why laying a foundation is necessary. Snukals and Sturtevant, 42 U. Rich. L. Rev. at 97 (citing Supreme Court of Virginia Pro Se Litigation Planning Committee, *Self-Represented Litigants in the Virginia Court System: Enhancing Access to Justice*, 7 (2002), available at http://www.docstoc.com/docs/3292738/SelfRepresented-Litigants-in-the-Virginia-Court-System-Enhancing-Access-to# (accessed July 27, 2012)). A judge who provides no guidance spends time muddling through the case and listening to irrelevant and unnecessary testimony and looking at irrelevant and unnecessary exhibits. *Id*. at 97. Some judges may be more lenient with procedural rules and pro se parties, while others are not, out of fairness to the opposing party who must follow the rules. Goldschmidt, 82 Judicature at 17. Some judges may go so far as to raise objections on behalf of the pro se party and question witnesses. *Id*. at 19.

The only way for a judge not to have to be concerned about balancing impartiality with the right to be heard is by appointing counsel for the unrepresented party. With counsel, the judge will no longer have to balance the needs of a pro se party and impartiality.

B. Impact on other court personnel.

Seventy-one percent of judges surveyed by the ABA were concerned by the time their staff devoted to assisting pro se parties, because they require more staff for assistance. ABA Coalition for Justice at 4, 12. In the American Judicature Society/Justice Management Institute's survey, 66% of court managers stated that "… the average daily proportion of their staff time that is devoted to providing pro se assistance … [was] 1 to 25 percent; 23 percent said that it was 26 to 50 percent; and 11 percent said it took between 51 to 100 percent of their time." Goldschmidt, 82 Judicature at 20. Pro se litigants suffering from mental illness or other impairments may require even more staff assistance than other pro se litigants.

"In addition to explaining how to file a lawsuit and determining which courtroom a pro se litigant should report to, clerks have the added difficulty of deciding how to approach questions such as 'How should I complete this form?' or 'What should I say to the judge?' without subjecting themselves to civil liability and criminal penalties for the unauthorized practice of law." Snukals and Sturtevant, U. Rich. L. Rev. at 96–97 (citing Goldschmidt, et al., *Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers*, http://www.ncsconline.org/WC/Publications/KIS_ProSeMeetChallenge.pdf; Supreme Court of Virginia Pro Se Litigation Planning Committee, at 19).

Ohio's unauthorized practice of law statute states that:

> No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules…. R.C. 4705.01 (A).
>
> No person who is not licensed to practice law in this state shall do any of the following: (1) Hold that person out in any manner as an attorney at law; … (3) Commit any act that is prohibited by the supreme court as being the

> unauthorized practice of law. (C) … (2) Any person who is damaged by another person who commits a violation of division (A)(3) of this section may commence a civil action to recover actual damages from the person who commits the violation…. R.C. 4705.07.

"Whoever violates division (A)(1) or (2) of section 4705.07 of the Revised Code is guilty of a misdemeanor of the first degree." R.C. 4705.99.

Clerks must be careful not to interpret courts' orders for pro se litigants, provide proper wording for court documents, or explain the consequences of filing a case. Snukals and Sturtevant, 42 U. Rich. L. Rev. at 98 (citing Virginia Pro Se Litigation Planning Committee at 63).

Court staff fear the penalties of unauthorized practice of law and, therefore, will refuse to answer many questions. Goldschmidt, 82 Judicature at 20. The probate court can help alleviate this fear and free up court staff time by providing counsel for all incompetent wards in not only the original case, but also in the review hearing.

C. <u>Impact on opposing parties and attorneys</u>.

"[R]epresented litigants suffer increased legal fees as their attorneys bill for the increased time the courts spends dealing with inexperienced pro se litigants." Snukals and Sturtevant, 42 U. Rich. L. Rev. at 97 (citing Brenda Star Adams, Note, *"Unbundled Legal Services": A Solution to the Problems Caused by Pro Se Litigation in Massachusetts's Civil Courts*, 40 New Eng. L. Rev. 308 (2005) ("[W]hen judges take extra time to explain proceedings to a pro se litigant, hourly fees for the opposing litigant rise, and this ultimately encourages more people to represent themselves. One major problem, therefore, is that pro se litigation breeds more pro se litigation."). "The pro se problem is, then, self-perpetuating: The increasing assistance from judges and self-service centers diminishes the demand for affordable attorneys by helping those that would otherwise employ those attorneys, yet most pro se litigants are forced to represent

themselves precisely because affordable attorneys are unavailable." Snukals and Sturtevant, 42 U. Rich. L. Rev. at 97 (citing Adams, 40 New Eng.L. Rev. at 314.) The probate court can help stop this vicious cycle by appointing counsel not only in the original guardianship hearing, but also in the review hearing.

VI. Appointing Counsel in a Guardianship Review Hearing is Not Unduly Burdensome for the Probate Courts.

Because the court is only required to grant at most one request for review per year, appointing counsel in a guardianship review hearings is not unduly burdensome for the probate courts. R.C. 2111.49 (C). Furthermore, only indigent wards are entitled to court-appointed counsel. R.C. 2111.02(C)(7)(d)(i). This limits the amount of times a court would have to appoint counsel and limits the amount of attorney fees that the court would have to pay for counsel.

Cuyahoga County Probate Court, the venue of McQueen's guardianship case, has sufficient funds available with which to pay for court-appointed counsel for indigent wards in review hearings. R.C. 2111.51 requires each county to establish an indigent guardianship fund. "Expenditures from the fund shall be made … only for payment of any cost, fee, charge, or expense associated with the establishment, opening, maintenance, or termination of a guardianship for an indigent ward." R.C. 2111.51 (Emphasis added). Only

> [i]f a probate court determines that there are reasonably sufficient funds in the indigent guardianship fund * * * to meet the needs of indigent guardianships in that county, * * * may [the court] declare a surplus in the indigent guardianship fund and expend the surplus funds for other guardianship expenses or for other court purposes. R.C. 2111.51.

Cuyahoga County Probate Court does not expend funds in review or termination hearings, on appointed counsel for indigent parties, and so the court had a surplus of funds in

2006 and 2007. Amici have no information available to them about whether there were also surplus funds available for the years 2008 through 2011 or the amount of such surplus funds.

In 2006, the court ordered that the surplus funds of $325,000 be paid to the General Fund of Cuyahoga County to fund Adult Guardianship Services for 2007. Relator's Response in Opposition to Respondent's Motion for Summary Judgment and Reply in Support of Relator's Motion for Summary Judgment, Exhibit B-1, in Appendix at A-1. In 2007, the court ordered that the surplus funds of $220,000 for the Indigent Guardianship fund be paid to the Adult Guardianship Services for 2008. Relator's Response in Opposition to Respondent's Motion for Summary Judgment and Reply in Support of Relator's Motion for Summary Judgment, Exhibit B-2, in Appendix at A-3). Regardless of whether the funds decreased between 2008 through 2011, there should be more than enough funds to cover court-appointed counsel for indigent parties.

There were 1,256 new guardianships of incompetent individuals cases filed in Cuyahoga County in 2007. Supreme Court of Ohio, *2007 Ohio Courts Summary*, 125 (2008). Only in 26 of these cases, or 2%, did the court appoint counsel to an indigent incompetent. Relator's Response in Opposition to Respondent's Motion for Summary Judgment and Reply in Support of Relator's Motion for Summary Judgment, Exhibit B-4, in Appendix at A-6). Only $68,113.76 of $288,113.76, or 24%, of the 2007 fund was spent on court appointed counsel and independent medical exams in guardianship cases, with an average of $851.42 in attorney fees and independent medical exams per case.[11] Relator's Response in Opposition to Respondent's

[11] There were 80 cases in which the Cuyahoga County Probate Court paid attorneys' fees for court appointed counsel and paid for independent medical exams for indigent incompetents in 2007. See Exhibit D in Appendix. However, only 26 of these cases were guardianship of incompetent cases that were newly filed in 2007. *Id*. The remainder of the cases were either minor guardianship cases or cases that were continuing from previous years. *Id*.

Motion for Summary Judgment and Reply in Support of Relator's Motion for Summary Judgment, Exhibits B-3 and B-4, in Appendix at A-5 and A-6. Because very few of the 2% who were indigent and appointed counsel would request a review hearing, the court would have sufficient funds with which to appoint counsel in the review hearings for those indigent wards.

There were 1,353 new guardianships of incompetent cases filed in Cuyahoga County in 2008. Supreme Court of Ohio, *2008 Ohio Courts Statistical Report*, 125 (2009). Only in 26 of these cases, or 2%, did the court appoint counsel to an indigent incompetent. Relator's Response in Opposition to Respondent's Motion for Summary Judgment and Reply in Support of Relator's Motion for Summary Judgment, Exhibit B-5, in Appendix at A-11. Only $52,439.15 was spent on court appointed counsel and independent medical exams in guardianship cases, with an average of $782.67 in attorney's fees and independent medical exams per case.[12] Exhibits B-3 and B-5 at A-5 and A-11 in Appendix. This is $68.75 less per case than in 2007. Again, the court would need minimal funds to appoint counsel for these few people if they requested a review hearing.

There were 1,296 new guardianship of incompetent cases filed in Cuyahoga County in 2009, 1,206 in 2010, and 1,153 in 2011. Supreme Court of Ohio, *2009 Ohio Courts Statistical Report*, 132 (2010); Supreme Court of Ohio, *2010 Ohio Courts Statistical Report*, 130 (2011); Supreme Court of Ohio, *2011 Ohio Courts Statistical Report*, 131 (2012). Cuyahoga County Probate Court spent $50,123.08 on appointed counsel and independent medical exams in guardianship cases in 2009, and $18,028.57 from January 1, 2010 through June 15, 2010. (See

[12] There were 67 cases in which Cuyahoga County Probate Court paid attorneys' fees for court appointed counsel and paid for independent medical exams for indigent incompetents in 2008. See Exhibit E in Appendix. However, only 26 of these cases were guardianship of incompetent cases that were newly filed in 2008. *Id*. The remainder of the cases was either minor guardianship cases, cases that were continuing from previous years, or cases where the guardian sued an agency on behalf of a ward. *Id*.

Exhibit C in Appendix). The 2010 numbers may not be indicative of the final whole year numbers because many attorneys wait until the end of the year to request their fees. (See Exhibit C in Appendix). Amici do not have any further information available to them about the cost of court appointed counsel and independent medical exams for 2010 or 2011.

Even though there were 40 more newly filed cases in 2009 than in 2007, Cuyahoga County Probate Court spent $17,990.68 less on court appointed counsel and independent medical exams in 2009 than in 2007. (See Exhibit C in Appendix). In light of these savings and the relatively low costs of appointed counsel in initial guardianship appointment hearings, the Court should have sufficient funds with which to pay for court appointed counsel in review hearings.

The number of new guardianship of incompetent cases in Cuyahoga County has decreased from 2007 through 2011. The amount of money that the Cuyahoga County Probate Court spends on appointed counsel in initial guardianship hearings has decreased from 2007 through 2010. There is more than enough money to fund court-appointed counsel in guardianship review hearings in Cuyahoga County. Furthermore, the court is required to appoint counsel in guardianship review hearings regardless of the availability of funds. Based on the statistics, appointing counsel in guardianship review hearings would not be unduly burdensome for the probate courts.

CONCLUSION

An indigent ward who alleges competency and who requests a guardianship review hearing is entitled to appointed counsel pursuant to R.C. 2111.02 and R.C. 2111.49 (C). R.C. 2111.49(C), which governs guardianship review hearings, clearly incorporates the statutory right to counsel set forth in R.C. 2111.02. This interpretation is fully consistent with both compelling considerations of public policy and similar statutory schemes in many other states, the Uniform

Probate Code, and the Uniform Guardianship and Protective Proceedings Act. The failure to appoint counsel for indigent wards in these proceedings also has a negative impact on the court system and is not unduly burdensome for the probate courts. Therefore, the decision of the Eighth District court of Appeals should be reversed and the Supreme Court should grant the requested writ of mandamus for appointment of counsel for Mr. McQueen.

Respectfully submitted,

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Counsel for Amici Curiae
The Arc of Ohio, National Alliance on Mental Illness of Ohio, and People First of Ohio

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by ordinary U.S. Mail to the following counsel on this _____ day of August, 2012:

JOHN R. HARRISON
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Ohio Legal Rights Service
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Columbus, OH 43215

CHARLES D. HANNAN, JR.
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APPENDIX

IN THE PROBATE COURT

DIVISION OF THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

IN RE:) DOC. 105 CASE NO. 1051[illegible]
)
INDIGENT GUARDIANSHIP)
FUND.)

JUDGMENT ENTRY

On the Court's Own Motion, a surplus of funds in the amount of **Three Hundred Twenty Five Thousand Dollars ($325,000.00)** is declared in the Indigent Guardianship Fund established pursuant to Ohio Revised Code Section 2101.16(C) and 2111.51.

It is further **ORDERED** that **Three Hundred Twenty Five Thousand Dollars ($325,000.00)** be paid by the County Treasurer out of the Indigent Guardianship Fund to the General Fund of Cuyahoga County to fund the Adult Guardianship Services **for the year 2007.**

NOV 06 2006

JOHN J. DONNELLY
Presiding Probate Judge

PROBATE COURT

DOC. 1056 CASE NO. 1057059

IN RE: INDIGENT GUARDIANSHIP FUND

On its own Motion, the Court hereby authorizes a surplus of funds in the amount of $325,000.00 be paid by the County Treasurer out of the Indigent Guardianship Fund to the General Fund of Cuyahoga County (for the year 2007).

O.S.J.

PROBATE COURT
FILED
NOV 0 6 2006
CUYAHOGA COUNTY, O.

PC 39-2/2790

DOCKETED
O.B.

IN THE PROBATE COURT

DIVISION OF THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

PROBATE COURT
FILED
DEC 13 2007
CUYAHOGA COUNTY, O.

FILE COPY

IN RE:	)	DOC. 105 CASE NO. 1057059
	)	
INDIGENT GUARDIANSHIP	)	
FUND.	)	JUDGMENT ENTRY

On the Court's Own Motion, a surplus of funds in the amount of **Two Hundred Twenty Thousand Dollars ($220,000.00)** is declared in the Indigent Guardianship Fund established pursuant to Ohio Revised Code Section 2101.16(C) and 2111.51.

It is further **ORDERED** that **Two Hundred Twenty Thousand Dollars ($220,000.00)** be paid by the County Treasurer out of the Indigent Guardianship Fund to the General Fund of Cuyahoga County to fund the Adult Guardianship Services **for the year 2008.**

JOHN J. DONNELLY
Presiding Probate Judge

EXHIBIT
B-2

DOCKETED
O.D.

PROBATE COURT

DOC. 1056 CASE NO. 1057059

Certified Copy

IN RE: INDIGENT GUARDIANSHIP FUND

On its own Motion, The Court hereby authorizes a surplus of funds in the amount of $220,000.00 be paid by the County Treasurer out of the Indigent Guardianship Fund to the General Fund of Cuyahoga County (for the year 2008).

O.S.J.

PROBATE COURT
FILED
DEC 13 2007
CUYAHOGA COUNTY, O.

PC 39-2/2790

DOCKETED
O.S.

Mitch Bell

From: David Mills [dmills@cuyahogacounty.us]
Sent: Thursday, July 08, 2010 9:41 AM
To: Mitch Bell
Subject: Re: Indigent Guardianship Fund Follow Up

Mr. Bell

You had requested records from 2007 and 2008. With two new judges and a massive county-wide buy out, none of the current administration was here during 2007 or 2008. Those records exist, but are archived with many others in the basement of the building, and are not easily accessible.

The Indigent Guardianship Fund is used primarily to pay court appointed counsel and to pay for independent medical examinations for indigent respondents. Towards the end of each calendar year, we review the fund and pay any excess moneys over to Adult Guardianship Services, an agency that exclusively serves the indigent. If a person owns real estate or has any other assets, they are generally disqualified as a prospective ward by AGS. It is the strong belief of this Court that by providing financial support to AGS we are able to reach the greatest number of indigent individuals and make the best use of the funds in the indigent account.

During the past three and one-half years, the following amounts have been expended for court appointed counsel and independent medical exams:

2007	$68,113.76
2008	$52,439.15
2009	$50,123.08
2010	$18,028.57 (Through 6/15/10)

The 2010 amount is probably not indicative of what the final number will be as many of the court appointed attorneys will request their attorney fees toward the end of the year. Most likely, the final number for 2010 will be consistent with the previous two years.

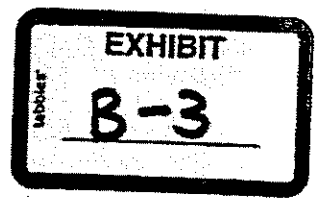
I hope this information is helpful.

Dave Mills

>>> "Mitch Bell" <MBell@olrs.state.oh.us> 7/8/2010 9:13 AM >>>
Dear Mr. Mills:

I am writing to follow up my previous inquiry about the indigent guardianship fund that you had received on the 21st of June. If there is anything more I can do to assist you, or other channels I would need to pursue please do not hesitate to let me know.

Thank You,
Mitchell Bell
Intern
Ohio Legal Rights Service



ATTORNEY FEES
PAID IN 2007
INDIGENT CASES

DATE	ATTORNEY	NAME OF CASE	CASE NO.	AMOUNT OF PAYMENT
1-02-07	Leslye M. Huff	Monica Alvis	2006 GDN 0115049	$2,303.75
1-08-07	Leslye M. Huff	Lisa M. Jackson	2006 GDN 0115149	$579.50
1-08-07	Leslye M. Huff	Melany Kirkpatrick	2001 GDN 0045362	$142.50
1-17-07	Leslye M. Huff	Cleola Harris	2006 GDN 0114361	$2,394.00
2-07-07	Leslye M. Huff	Gail Aazhar	2006 GDN 0118317	$931.00
2-28-07	Leslye M. Huff	Patricia Ann Jones	2000 GDN 0034416	$1,206.50
9-25-07	Leslye M. Huff	Carrie Jackson	2006 GDN 0115413	$2,560.25
				10,119
1-09-07	Ronald L. McLaughlin	Richard Cottom	2006 GDN 0118877	$1,140.00
1-09-07	Ronald L. McLaughlin	Howard Jones	2006 GDN 0118877	$520.00
				1,660
1-02-07	Victoria Nagy Smith	Barbara Yonchak	2006 GDN 0111989	$90.00
1-02-07	Victoria Nagy Smith	Helen Shields	2006 GDN 0114230	$360.00
1-02-07	Victoria Nagy Smith	Nora Budinger	2005 GDN 0101557	$120.00
1-02-07	Victoria Nagy Smith	Peter Yonchak	2006 GDN 0111992	$510.00
1-02-07	Victoria Nagy Smith	Mary Madison	2006 GDN 0109978	$620.00
1-02-07	Victoria Nagy Smith	Dawn Marie Liotta	2005 GDN 0102529	$540.00
1-02-07	Victoria Nagy Smith	Dolores Lege	2006 GDN 0116092	$376.00
1-10-07	Victoria Nagy Smith	Mildred Perkins	2005 GDN 0102541	$1,997.50
6-08-07	Victoria Nagy Smith	Beverlee Hauser	2007 GDN 0122582	$360.00
6-08-07	Victoria Nagy Smith	Anne Arendt	2007 GDN 0121748	$380.00

DATE	ATTORNEY	NAME OF CASE	CASE NO.	AMOUNT OF PAYMENT
6-26-07	Victoria Nagy Smith	Gwendolyn Balke	2007 GDN 0124231	$351.00
7-11-07	Victoria Nagy Smith	Helen E. Sukey	2006 GDN 0117049	$415.00
7-11-07	Victoia Nagy Smith	Anna Melkus	2006 GDN 0111352	$212.50
7-11-07	Victoria Nagy Smith	Susan Ann Burton	2006 GDN 1144711B	$1,640.00
7-11-07	Victoria Nagy Smith	Judith Mauldin	2001 GDN 0045065	$272.00
7-11-07	Victoria Nagy Smith	Leyva-Varona	2007 GDN 0123272	$110.50
7-17-07	Victoria Nagy Smith	Norma M. Wilmoth	2006 GDN 0117058	$1,395.00
7-17-07	Victoria Nagy Smith	Barbara Kapsalis	2007 GDN 0122530	$255.00
		5		10,005
1-02-07	Nelli Johnson	Louise Antoinette Ulmer	2006 GDN 0116084	$552.50
1-10-07	Nelli Johnson	Lorelei Robinson	2005 GDN 0107279	$697.00
3-01-07	Nelli Johnson	Carolyn B. Williams	2001 GDN 0048142	$100.00
7-11-07	Nelli Johnson	Carolyn B. Williams	2001 GDN 0048142	$240.00
8-15-07	Nelli Johnson	Timothy Frank Zalent	2005 GDN 0121023	$361.25
11-21-07	Nelli Johnson	Dorothy Jolly	1022024	$752.25
				2,150
1-02-07	Gregory S. Thomas	Ira Q. Miller	2006 GDN 0118562	$300.00
1-16-07	Gregory S. Thomas	Terry Allen Nichols	2005 GDM 1143514 C	$1,350.00
4-19-07	Gregory S. Thomas	Jesse Phillips	2005 GDN 0108670	$2,625.00
5-21-07	Gregory S. Thomas	James Norman Greene	2007 GDN 0122242	$700.00
5-25-07	Gregory S. Thomas	Roy Caldwell	2006 GDN 0120234	$370.00
5-25-07	Gregory S. Thomas	Joseph Harris	2007 GDN 0123807	$190.00
5-31-07	Gregory S. Thomas	Willie Murphy	2007 GDN 0122577	$700.00
6-01-07	Gregory S. Thomas	Jesse P. Knox	2006 GDN 0113141B	$1,681.00

DATE	ATTORNEY	NAME OF CASE	CASE NO.	AMOUNT OF PAYMENT
7-03-07	Gregory S. Thomas	Kathryn Adams	2006 GDN 0093213	$1,625.00
7-13-07	Gregory S. Thomas	Darlene James	2005 GDN 0106470	$600.00
7-17-07	Gregory S. Thomas	George Hocker	2007 GDN 0123898	$625.00
8-16-07	Gregory S. Thomas	Justine Modesty	2007 GDN 0121954	$600.00
10-29-07	Gregory S. Thomas	Grace Melton	2007 GDN 0128536	$500.00
10-29-07	Gregory S. Thomas	Dennis Griffin	2007 GDN 0121955	$750.00
11-09-07	Gregory S. Thomas	Joe Louis Bell	2007 GDN 0130344	$450.00
				13,056
1-18-07	Theodore S. Holtz #34-6690552	Sophie Glepko	2006 GDN 0119423	$1,645.00
				1,645
2-05-07	Katherine T. Joseph Aggers Joseph Co., LPA #34-1958811	Dorothy Jolly	2005 GDN 1022024	$2,867.29
2-05-07	Aggers Joseph Co., LPA	Margaret Weinacht	2002 GDN 0064276	$7,025.24
4-03-07	Aggers Joseph Co., LPA	Clarence H. Crayton	2006 GDN 0078994C	$998.00
				10,890
2-23-07	Kimberly K. Yoder #299-80-2409	Miranda Kirtley-Robinson	2006 GDN 0119572	$297.50
7-06-07	Kimberly K. Yoder	Mildred Rollocks	2004 GDN 0086625	$518.50
7-27-07	Kimberly K. Yoder	Phyllis Hughes	2006 GDN 0121023	$1,453.00
8-27-07	Kimberly K. Yoder	Margaret Ruffin	2007 GDN 0123504	$459.00

DATE	ATTORNEY	NAME OF CASE	CASE NO.	AMOUNT OF PAYMENT
1-02-07	Gregory T. Stralka	Michael Lembike	2006 GDN 0118607	$140.00
1-02-07	Gregory T. Stralka	Pearlie Flemming	2006 GDN 0116517	$520.00
1-02-07	Gregory T. Stralka	Daryl Macklin	2006 GDN 0116277	$220.00
1-02-07	Gregory T. Stralka	Earl Simpson	2002 GDN 0060583	$760.00
3-15-07	Gregory T. Stralka	Nicholas Rodin	2006 GDN 0117402	$770.00
4-16-07	Gregory T. Stralka	James Horn	2007 GDN 0122580	$290.00
5-22-07	Gregory T. Stralka	Henry Haugabrook	2007 GDN 0123605	$290.00
5-22-07	Gregory T. Stralka	Joseph Berg	2007 GDN 0123076	$560.00
5-24-07	Gregory T. Stralka	Roy Caldwell	2006 GDN 0120234	$370.00
5-24-07	Gregory T. Stralka	Joseph Harris	2007 GDN 0123807	$190.00
6-25-07	Gregory T. Stralka	James A. Catino	2007 GDN 0123413	$470.00
6-28-07	Gregory T. Stralka	Peter Drazetic	2003 GDN 0072172	$420.00
7-19-07	Gregory T. Stralka	Charles Anderson	2006 GDN 0119004	$150.00
7-19-07	Gregory T. Stralka	Danny Fetterman, Jr.	2007 GDN 0124667	$720.00
7-19-07	Gregory T. Stralka	Damon Smith	2007 GDN 0125162	$210.00
7-19-07	Gregory T. Stralka	Robert Ritchey	2007 GDN 0125782	$170.00
7-19-07	Gregory T. Stralka	John Zaranec	2007 GDN 0123849	$570.00
9-11-07	Gregory T. Stralka	Charles Weaver	2007 GDN 0127358	$390.00
11-14-07	Gregory T. Stralka	Mihai Potopea	2007 GDN 0128446	$490.00
11-14-07	Gregory T. Stralka	Richard Usner	2007 GDN 0128780	$320.00
				10,741
4-05-07	Elizabeth A. Goodwin	Velma Dowis	2005 GDN 0105991	$347.50

DATE	ATTORNEY	NAME OF CASE	CASE NO.	AMOUNT OF PAYMENT
4-05-07	Elizabeth A. Goodwin	Pamela Pinkney	2006 GDN 0115435	$895.00
11-15-07	Elizabeth A. Goodwin	Joseph Dostal	2006 GDN 0112910	$671.00
				1,914
1-02-07	Mary Haas McGraw	Delores Feldscher	2006 GDN 0030826B	$1,625.00
7-23-07	Raymond S. Gruss #34-1289514	Joseph Valenti	2007 GDM 0063397B	$843.53

ATTORNEY FEES
PAID IN 2008
INDIGENT CASES

DATE	ATTORNEY	NAME OF CASE	CASE NO.	AMOUNT OF PAYMENT
1-07-08	Gregory S. Thomas	Christine Coleman	2005 GDN 0106000	$1,750.00
1-23-08	Gregory S. Thomas	Beulah Woods	2007 GDN 0124796	$1,400.00
1-28-08	Gregory S. Thomas	John D. Greene	2005 GDN 0097746	$1,265.00
3-26-08	Gregory S. Thomas	William Owens	2007 GDN 0131657	$440.00
4-28-08	Gregory S. Thomas	Hazel Hawkins	2008 GDN 0133727	$550.00
4-28-08	Gregory S. Thomas	Miles Smith, Jr.	2008 GDN 0132734	$660.00
5-01-08	Gregory S. Thomas	Sarah Johnson	2007 GDN 0123171	$950.00
5-01-08	Gregory S. Thomas	Eulady Childs	2007 GDN 0131599	$950.00
7-01-08	Gregory S. Thomas	Georgia Grays	2008 GDN 0132473	$935.00
7-09-08	Gregory S. Thomas	Ella Dixon	2008 GDN 0132534	$1,343.12
8-04-08	Gregory S. Thomas	Bobbie J. Luckett	2007 GDN 0123755	$2,457.50
8-29-08	Gregory S. Thomas	Willie Mae Driffin	2006 GDN 0109102 B	$1,697.50
9-26-08	Gregory S. Thomas	James P. Jennings, Jr.	2001 GDN 0043481	$385.00
11-26-08	Gregory S. Thomas	George Walker	2008 GDN 0138682	$552.50
				$ 15,355
1-15-08	Gregory T. Stralka	Jeffrey Perrault	2003 GDN 0936142-B	$650.00
2-12-08	Gregory T. Stralka	Kenneth Eckhardt	2000 GDN 0005310-D	$850.00
2-12-08	Gregory T. Stralka	Thea Ferrell	2007 GDN 0130590	$270.00
2-12-08	Gregory T. Stralka	Andre J. Frizzell	2007 GDN 0123542	$350.00
4-28-08	Gregory T. Stralka	Michael E. Valigore	2008 GDN 0134012	$110.00

EXHIBIT
B-5

DATE	ATTORNEY	NAME OF CASE	CASE NO.	AMOUNT OF PAYMENT
5-01-08	Gregory T. Stralka	Michael Mechir	2007 GDN 0052920 B	$580.00
6-06-08	Gregory T. Stralka	Mark K. Howard	2008 GDN 0134718	$320.00
6-06-08	Gregory T. Stralka	Louis W. Modic	2008 GDN 0124794	$330.00
7-30-08	Gregory T. Stralka	Eleanor Krawczuk	2007 GDN 0131929	$700.00
9-05-08	Gregory T. Stralka	Michael Miller	2008 GDN 0138316	$260.00
9-17-08	Gregory T. Stralka	Steven Cozart	2008 GDN 0137505	$540.00
9-25-08	Gregory T. Stralka	Troy M. Melton	2008 GDN 0139289	$420.00
12-09-08	Gregory T. Stralka	Michael J. Garvey	2007 GDN 0129302	$920.00
12-09-08	Gregory T. Stralka	David S. McAtee	2008 GDN 0137979	$670.00
				6,970
1-18-08	Mary Haas McGraw	Gloria Walker	2006 GDN 114140	$280.00
11-21-08	Mary Haas McGraw	Shirley Ausman	2008 GDN 0135886	$760.84
				1041
2-04-08	Victoria Nagy Smith	Jennie Felton	2007 GDN 0125435	$59.50
2-04-08	Victoria Nagy Smith	Kathleen O'Donnell	2007 GDN 0128180	$323.00
2-04-08	Victoria Nagy Smith	Loretta Egyed	2007 GDN 0887652	$272.00
2-04-08	Victoria Nagy Smith	Edna Boysaw	2007 GDN 0127646	$204.00
4-08-08	Victoria Nagy Smith	Elaine Patricia Brooks	2007 GDN 0130698	$399.50
5-06-08	Victoria Nagy Smith	Shirley Crombine	2003 GDN 0083914	$1,483.00
5-16-08	Victoria Nagy Smith	Mae Chandler	2008 GDN 0133893	$255.00
7-10-08	Victoria Nagy Smith	Marcia Gambatese	2008 GDN 0132902	$670.00

DATE	ATTORNEY	NAME OF CASE	CASE NO.	AMOUNT OF PAYMENT
7-15-08	Victoria Nagy Smith	Jessica J. Galati	2008 GDN 0134716	$380.00
7-15-08	Victoria Nagy Smith	Lauren L. Galati	2008 GDN 0134717	$380.00
8-29-08	Victoria Nagy Smith	Corey Matthew Davis	2008 GDN 0133665	$476.00
8-29-08	Victoria Nagy Smith	Tona Haile	2008 GDN 0134567	$255.00
8-29-08	Victoria Nagy Smith	Duzy Stojanovski	2007 GDN 0128506	$374.00
9-11-08	Victoria Nagy Smith	Suzanne Arab	2008 GDN 0133936	$262.50
9-11-08	Victoria Nagy Smith	Katherine Cale	2005 GDN 0107915	$1,989.00
10-20-08	Victoria Nagy Smith	Leonarda Gramuglia	2008 GDN 0137716	$467.50
11-25-08	Victoria Nagy Smith	Lynda D. Douglas	2008 GDN 0141080	$440.00
				$5,692
2-05-08	John P. Koscianski	Joseph Dunikowski, Sr.	2007 GDN 0130264	$531.25
10-31-08	John P. Koscianski	Clemens Leciejewski	2008 GDN 0138810	$500.00
				1031
2-15-08	Nelli Johnson	Mabel McCall	2007 GDN 0127127	$450.50
3-03-08	Nelli Johnson	Willie M. Williams	2007 GDN 0130974	$293.25
3-01-08	Nelli Johnson	Kimberly R. Swindler	2000 GDN 0032352	$825.00
10-30-08	Nelli Johnson	Ellen Thurman	2008 GDN 0139542	$160.00
12-05-08	Nelli Johnson	Michael Hurst	2006 GDN 0106886 B	$1.614.70

DATE	ATTORNEY	NAME OF CASE	CASE NO.	AMOUNT OF PAYMENT
3-18-08	Elizabeth A. Goodwin	Josephine Liebner	2003 GDN 0083572	$480.50
4-22-08	Elizabeth A. Goodwin	Lulu Hawley	1999 GDN 0025822	$413.00
8-04-08	Elizabeth A. Goodwin	Dorothy Raine	2007 GDN 0126001	$790.17
				5,028
3-25-08	James H. Hewitt, III	Nicole Mitchell, a Minor	2007 GDM 1106494B	$1,439.69
4-01-08	James H. Hewitt, III	Pinkie Hall	2005 GDN 0108990	$2,948.78
5-20-08	James H. Hewitt, III	Ozzia Neal	2006 GDN 0089562 B	$1,236.25
				5,625
4-21-08	Leslye M. Huff	Almeda Primm	2007 GDN 0125230	$1,075.00
5-20-08	Leslye M. Huff	Seretha Henderson	2007 GDN 0127218	$1,400.00
7-28-08	Leslye M. Huff	Linda Ann Watts	2008 GDN 0137537	$487.50
7-30-08	Leslye M. Huff	Constance Holloway	2007 GDN 0124830	$503.30
7-30-08	Leslye M. Huff	Justine B. Modesty	2007 GDN 0121954	$2,593.50
				6,051
5-17-08	Kimberly K. Yoder	Barbara Boyles Hofman	2008 GDN 0134097	$296.00
				296
7-28-08	Egidijus Marcinkevicius	LuAnn Mitchell, Gdn. of Bertha L. Washington vs. Wester Reserve Area Agency on Aging	2002 ADV 0059296	$2,534.03
				2,534