

IN THE SUPREME COURT OF OHIO
BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE

In re:

07-1581

Complaint against)
Luann Mitchell)
Attorney Reg. No. 0007205)
)
Respondent)
CLEVELAND BAR ASSOCIATION)
)
)
Respondent)
)
)
)
)

OBJECTIONS TO PANEL AND BOARD RECOMMENDATIONS WITH
REQUEST FOR ENLARGEMENT OF TIME BASED ON CIRCUMSTANCES BEYOND
RESPONDENT'S CONTROL

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RESPONDENT, PRO SE

CLEVELAND BAR ASSOCIATION
RESPONDENT

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OCT 17 2007
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SUPREME COURT OF OHIO

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES..... iii

STATEMENT OF THE CASE AND FACTS..... 3

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW..... 8; 9; 15

Proposition of Law No. 1:

Prior counsel's 11th hour withdrawal as Respondent's counsel, and failure to adequately notify Respondent, was filed with the Ohio Supreme Court on October 15, 2007, and was mailed to Respondent on that same date and received on October 17, 2007, violating the due process rights of Respondent.

Proposition of Law No. 11:

A court-appointed guardian cannot be held liable for the personal debts of a deceased Ward, in violation of Ohio Revised Code Section 2111.51(B) or held to be acting outside the scope of her fiduciary duties when collecting debts due to the Ward, both in compliance with the Ohio Revised Code. To do otherwise violates the due process rights of the guardian, who was engaged in carrying out regularly formal collection proceedings and in accordance with established rules and principles, and was NOT a party to the litigation, at the time opposing counsel alleged the guardian violated Civil Rule 11 and ORC 2323.51 and was then, incorrectly, held personally liable.

Proposition of Law No. 111:

Due Process Is Denied a guardian, when collecting debts due the Ward pursuant to statute, when the guardian is subjected to a zealously litigation offense staged by opposing counsel to NOT pay a debt twice awarded to an indigent Ward, in the face of that opposing counsel being told at the outset, and before filing any pleadings NOT to pay the debt to the Ward, that due to the passage of over 1 ½ years since the Ward was awarded TWO favorable decisions of monies due to the Ward, to then try to overturn those decisions clearly outside the 15 day administrative period prescribed to have appealed the decisions was in violation of the administrative rules. Thus, a guardian should not be held liable for defending the Ward and collecting debts due the Ward for litigation that opposing counsel had no authority at law to ever commence.

CONCLUSION..... Pg 19

CERTIFICATE OF SERVICE..... Pg 20

APPENDIX..... Pg 30

Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio

TABLE OF AUTHORITIES

PAGE	Statutes	Page
1. Ohio Revised Code Section	2111.17	10
2. Ohio Revised Code Section	2111.14	13
3. Ohio Revised Code Section.....	2323.51	14
4. Ohio Administrative Code Section 5101.....		5

OVERVIEW

This case gives the Court an apt opportunity to speak on an issue that has been seriously distorted by the panel, which the Board then expounded upon in ordering a criminal sanction in the amount of \$28,000 as restitution (although this amount is derived from a civil case originally filed in Cuyahoga County Probate Court), and then ordered Respondent to have a residence address when, in fact, Respondent has no permanent residence address currently and cannot afford one presently. Such a recommendation holds a criminal sanction over the head of Respondent, while penalizing Respondent for not having a permanent residence address, which is not affordable at this time for Respondent. Respondent has not been employed gainfully since 1997, received absolutely no monies from the Probate Court as the court-appointed guardian for Bertha Washington (the "Ward") from July 1999 until November 2003 (the Ward's date of death), subsequently retired, and volunteers her time to assist the poor and elderly when called upon. While Respondent sincerely appreciates the Panel hearing the case presented on April 23-24, 2007, Respondent respectfully points out to this court several incorrect findings and disparities which may have been inadvertent on the Panels' part, and on which the Board relied. It has resulted in a decision that could, unless the six-month recommended suspension is stayed, expressly hurt the senior citizen population the panel found Respondent did so much for, without compensation, in assisting. (See Panel Recommendation p. 58)

Without doubt, this case is about Respondent who zealously represented the Ward within the bounds of the law. In this case, Attorney L. Mitchell was appointed by the Probate Court of Cuyahoga County to be the Guardian of their Ward, Bertha L. Washington, on July 12, 1999.

Attorney Mitchell signed the Fiduciary's Acceptance, and complied (see #1 and #2, Guardian of the Person) with "Instructions to Guardian" including #4, authorizing and ordering the Ward's Guardian to "collect all debts due the Ward". (Exhibit A,B). At no time was the Respondent acting contrary to what were the Ward's interests.

In our present case, Respondent was appointed the Ward's Guardian only after the Ward had been in the care and control of the Complainant's program, Western Reserve Area Agency on Aging ("WRAAA") for approximately 5 1/2 years before Respondent's appointment. Ironically, WRAAA's abuse, neglect and exploitation of the Ward, Bertha Washington, triggered the involvement of Adult Protective Services, Belinda Miller-Miles, Investigator, who ultimately wanted WRAAA removed from Mrs. Washington's case and a Guardian appointed by the Probate Court. The Probate Court contacted Respondent several times to inquire on Respondent's availability to be appointed by the Probate Court as Mrs. Washington's court-appointed Guardian. On July 12, 1999, Respondent accepted such a challenge.

It is of paramount importance in our justice system that we do not hinder being able to engage qualified, competent legal assistance for our poor, frail and elderly. If we fail to protect this issue, then only the rich in our society will have the best and brightest attorneys because their money can buy them that safeguard. However, our system of justice, as espoused by our forefathers, did not envision that the poor, frail elderly and disenfranchised should be without qualified legal representation because of their status in life. However, the conduct and rulings in our present case so gravely affect this issue as no reputable attorney would subject themselves, voluntarily to involuntary servitude in court-appointed cases for the indigent in Probate Court, only to advance fees and their time and never to be paid, or subjected to sanctions during their

zealous representation of a Ward. Without doubt, an insolvent estate and an indigent "poor, frail and elderly senior citizen has no way to pay such counsel and would thus only obtain substandard services. Justice delayed, in this case by not having qualified, competent counsel, is justice denied.

STATEMENT OF THE CASE AND FACTS

This case arises from the appointment by the Probate Court of Cuyahoga County on July 1999 of L. Mitchell as Guardian of the Estate and Person of its indigent and elderly 92 year old Ward, Bertha L. Washington. On March 28, 2000 and June 21, 2000, Mitchell successfully litigated and was awarded TWO administrative hearing decisions favorable to the Ward. Succinctly stated, Complainant, Western Reserve Area Agency on Aging, was ordered TWICE by its regulators, the Ohio Department of Administrative Services, to reimburse 92 year old Bertha L. Washington for expenses incurred when she was wrongfully terminated from the PASSPORT 10-A program after properly and timely filing her appeal to their decision to terminate her untimely from their program. Mrs. Washington had been in a rehabilitative facility, not a nursing home as defined by the Keyes Amendment, SOLELY due to the substandard care of the Complainant, PASSPORT 10-A program negligence, misfeasance and malfeasance during the 5 1/2 years Mrs. Washington had been enrolled in their program. During this time, the Appellee's purposefully and intentionally kept Mrs. Washington "bed bound and house bound" so that they could continue to keep her in their program, which included sending their home health aides and supplies, and all for which they continued to charge an EXORBITANT fee to the state, local, county and federal government for such substandard

care. In essence, PASSPORT made sure that they had a job and had participants in their program by insuring that persons remained house bound.

It must be noted that at termination of services fro Washington in February 2000, WRAAA maintained a county-wide contract with all of Mrs. Washington's providers that they would not provide services to her for a period of one year if she was not enrolled in the PASSPORT 10-A program. Thus, Complainant was aware that upon Washington's termination from its program, she would be UNABLE to get PASSPORT certified Providers to provide PASSPORT certified services. However, this was merely a play on words, in that the decisions dated June 21, 2000 required that services paid for by Washington during the wrongful termination period of February 5, 2000 to March 28, 2000 be reimbursed. That decision NEVER stated that such would be the case if the providers were PASSPORT certified while providing "PASSPORT-like" services. This distortion has been the crux of this case.

After Respondent's appointment in 1999, Appellant was place in a rehabilitative facility SOLELY due to the actions of Complainant, WRAAA, during the preceding 5 1/2 years in keeping the Mrs. Washington bed bound and house bound. Mrs. Washington could not even bend at the normal extremities (i.e. knees, elbows, etc.) from laying in the bed the entire duration of WRAAA's involvement with her. They did absolutely nothing to encourage her to remain to any semblance of a normal life style, and specifically led her to believe she would spend the rest of her days in her bed, bound in her house, WITH MULTIPLE BED SORES, until the day she died. At this juncture, Mrs. Washington believed death was the mercy angel.

On February 5, 2000, Mrs. Washington came home after an extensive rehabilitative program from October 1999 until this discharge date. She was a new person. Her spirit was

revitalized. She had a new lease on life...and she was OUT OF THE BED! The Respondent-guardian obtained a battery powered chair for the Ward, which enable her until her death to travel throughout the United States and abroad. She attended church services each Sunday, traveled with her church to out-of state services, enrolled in college, joined an exercise class, shopped at the malls, etc... as would any other human being not confined to a wheel chair as Mrs.

Washington was. She continued to live a vibrant, happy and productive life until her death on November 6, 2003.

During the pendency of her life, and now, after her death, the issue of the failure of WRAAA to pay reimbursable expenses awarded to the Ward from February 5, 2000 to March 28, 2000 totaling \$31,658.00 has remained at issue. This decision could not be attacked or overturned. THESE MONIES are still due today and the Complainant, WRAAA, continues to fail to pay the Ward, and now the Wards' Estate these exact monies while at the same time is now pursuing the Ward's former Guardian to pay its own alleged attorney fees.

The Ohio Administrative Code Section 5101:6-7-01 (herein after referred to as "OAC") provides in pertinent part:

(H) State hearing decisions SHALL be binding on the agency or managed care plan for the individual case for which the decision was rendered.

The operative language of the OAC places compliance on the Defendant into perpetuity until FULL COMPLIANCE is met. Pursuant to the OAC, the state hearing decision is binding on the agency. Since no timely appeal was taken by the agency, monies demanded by Plaintiff-appellant are just, due and owing to Mrs. Washington's estate in the amount of \$31, 658.00.

In addition, fees due to the Respondent-Guardian were also totally disregarded, totaling approximately \$56,000 at an hourly rate of \$125.00 per reduced hour as prescribed by the Probate Court of Cuyahoga County from July 12, 1999 until November 6, 2003. While the Probate Court did award an arbitrary figure of \$1,525.00 to Respondent, this amount pales compared to the work performed and completed by Respondent-Guardian. Thus, the Probate Court subjected its own appointed guardian to involuntary servitude when it failed to pay her for services rendered from its INDIGENT FUND when this guardian submitted her application for payment and supplemental fee application during the pendency of the matter, which ultimately grew into a disciplinary proceeding.

It is noted that at no time did this Guardian file frivolous or sham pleading in this case. Legitimate monies which had been twice awarded to the Ward were due and owing. AND TO WHICH TO THIS VERY DATE HAVE STILL NOT BEEN PAID TO THE NOW ESTATE OF THE WARD ! It is incredulous to the Respondent that Complainant would seek attorney fees for creating a legal maze in a matter that he could never overturn at the OUTSET as it was beyond the 15 day period to ever appeal the two administrative decisions his client was bound by.

All collection attempts to collect \$31,658.00 due to the Ward were sanctioned by law. Collection efforts cannot be frivolous when these monies were, and still are, due and owing to the Ward, and/or her Estate. Hopefully, this court will not judge the good intentions of Respondent based on her style of collections.

This court should not ignore the FACT that when Attorney Dale Nowak submitted his "Evidence of Attorney Fees" he intentionally failed to start that fee bill with the real first entry

date of January 22, 2002. This letter was a request from Nowak to the State Hearing Board to RE-OPEN the matter of reimbursable fees previously awarded the Ward on March 28, 2000 and June 21, 2000. His written response was that the decisions, per administrative rule Section 5101, were final and binding on the agency. In attempts to conceal this, Nowak then started his "Evidence of Attorney Fees" with a date of February 26, 2002, as though this was the first time he performed any activity on this case for his client, WRAAA. This is a major obstruction of justice, and a severe distortion of what has really been happening in this case for the five years to which Nowak seeks HIS attorney fees as a sanction for Mitchell having acted within the bounds of the law in protecting and defending the Ward, and the collection of just debts due to this same Ward.

Respondent would ask this tribunal to not disregard how this case began with Nowak's client owing money to the Ward and Nowak creating a smoke screen and creating legal fees to fatten his own coffers. In essence, Nowak has kept this case active over a five year period for the sole purpose of paying himself, while at the same time still leaving his client open for the liability of \$31,658.00 still due and owing to the estate of Bertha L. Washington.

Finally, Attorney Dale Nowak filed his Motion for Sanctions timely, but then extended his efforts to collect additional monies well beyond the 30 day prescribed period. Thus, he has been out of rule and acting upon no authority to keep this case accruing attorney fees into perpetual time. Thus, when he failed to submit and adhere to the 30 day time limit, he was not entitled to receive any attorney fees as alleged, in addition to the reasons set forth within. Respondent contends that he has utilized this court to collect his own attorney fees, which he states is \$28,000.00 in the form of sanctions.

However, the gravamen of this disciplinary proceeding is that at no time should this case have proceeded at the outset. Succinctly stated, Attorney Dale Nowak was 1 ½ years too late to even begin to attack the administrative decisions awarding the Ward \$31,658.00 in reimbursable expenses due to the wrongful termination by Complainant of Mrs. Washington from its government funded program designed to assist the poor, frail and elderly stay in their homes and not go to nursing homes. Furthermore, The Cuyahoga County Bar Association reviewed the complainant letter initially and did NOT FIND PROBABLE CAUSE to proceed in this matter. Then, after this fact, Respondent received notification that the Cleveland Bar Association was championing the matter. It went forward, which brings us to these objections being filed in the current matter.

Thank you in advance for your consideration in this matter.

Proposition of Law No. 1:

Prior counsel's 11th hour withdrawal as Respondent's counsel, and failure to adequately notify Respondent, was filed with the Ohio Supreme Court on October 15, 2007, and was mailed to Respondent on that same date and received on October 17, 2007, violating the due process rights of Respondent.

Since Respondent can only file limited objections due to the actions of prior counsel, Respondent is requesting leave to extend the time to get new counsel and supplement Respondent's Objections with respect to the Panel and Board's Findings and Recommendations.

In addition, prior counsel informed Respondent the filing deadline for Objections was October 18, 2007. Respondent learned from the court's clerk on October 16, 2007 that

Respondent's date for filing Objections was actually October 17, 2007. Respondent was previously unaware that prior counsel had taken a stipulated leave earlier, which further impeded Respondent in trying to protect her due process rights in this matter.

Based on the foregoing, Respondent requests this court enlarge the date in which Respondent can supplement her Objections after securing legal counsel, as well as the time allotted the Relator to file its Answer Brief.

Proposition of Law No. 11:

A court-appointed guardian cannot be held liable for the personal debts of a **deceased Ward, in violation of Ohio Revised Code Section 2111.51(B)** or held to be acting **outside the scope of her fiduciary duties** when collecting debts due to the Ward, both in **compliance with the Ohio Revised Code**. To do otherwise violates the due process rights of the guardian, who was engaged in carrying out regularly formal collection proceedings and in accordance with established rules and principles, and was NOT a party to the litigation, at the time opposing counsel alleged the guardian violated Civil Rule 11 and O.R.C. 2323.51 and was then, incorrectly, held personally liable.

II. AS GUARDIAN OF MS. BERTHA L. WASHINGTON, MS. L. MITCHELL CAN SUE IN HER OWN NAME AND STILL NOT BE HELD PERSONNALLY LIABLE FOR THE DEBTS OF DECEDENT, MS. BERTHA L. WASHINGTON.

Ohio Revised Code Section 2111.17 reads as follows:

“A guardian may sue in his own name, describing himself as guardian of the ward for whom he sues...”

Please See Exhibit C.

The Caption in the Magistrates decision reads as follows:

**In the Matter of Bertha L. Washington, Incompetent And Mitchell
v.
Western Reserve Area Agency of Aging**

Ms. L. Mitchell had the legal right to sue under her own name as guardian of Decedent Bertha L. Washington under Ohio Revised Code Section 2111.17 without triggering any personal liability. Ms. L. Mitchell, at all times, continued to act in her fiduciary capacity in all legal matters pertaining to the person and estate of Decedent Mrs. Bertha L. Washington. Therefore, as guardian, Ms. L. Mitchell must never be held personally liable for any debts incurred by Decedent, Mrs. Bertha L. Washington.

III. AS GUARDIAN, IT WAS THE DUTY OF MS. L. MITCHELL TO BRING SUIT FOR DECEDENT, MRS. BERTHA L. WASHINGTON BECAUSE IT WAS IN THE BEST INTEREST OF MS. BERTHA L. WASHINGTON.

Ms. L. Mitchell received two judgments for the person and estate of Mrs. Bertha L. Washington in her capacity as guardian of Decedent's person and her estate while Decedent was still alive as a result of a timely filing for a State Hearing. The judgments were against Defendants for inappropriately and illegally terminating services through their program for Decedent Ms. Bertha L. Washington during the pendency of the appeal despite Ms. L. Mitchell's timely request for a hearing. During the course of the appeal by

Guardian L. Mitchell, Defendant Western Reserve Area Agency on Aging admitted that services were terminated improperly during the course of the appeal. The State Hearing Officer found violations by Defendant and ruled in favor of Mrs. Bertha L. Washington stating in his Final Administration Decision and Order that Defendant Western Reserve Area Agency on Aging must:

“...reimburse for the care she paid for during that period-COMPLIANCE REQUIRED.” (By which no timely appeal was made by Defendants.)

Please See Exhibit D.

As to the required compliance ordered by the State Hearing Officer, compliance by Defendants was never accomplished to this very day. In a letter dated, December 21, 2001, Virginia Ringle, Assistant Chief of the Bureau of State Hearings demanded the following to Defendant Western Reserve Area Agency on Aging:

“Miss Luann Mitchell, legal guardian for Ms. Bertha Washington has reported to me that your agency has not yet reimbursed Ms. Washington in the amount of money that she paid for her care from February 5, 2000 to March 28, 2000 as you were ordered to do so by the State hearing decision...Please take whatever action is necessary to comply with the State hearing decision and send me verification that you have done so.”
Please See Exhibit E.

Defendant Western Reserve Area Agency on Aging to this present date has not complied with the binding ruling set forth above. Furthermore, Defendant Western Reserve Area Agency on Aging did not make a timely appeal on said matter as well. The only communication by Defendant's counsel about the binding decision in favor of Plaintiff Guardian L. Mitchell for the person and estate of Mrs. Bertha L. Washington was that counsel erroneously attempted to reopen a State Hearing decision that by law is closed for any rehearing to perpetuity. No appeal of said decision was ever made by Defendant within the 15 day limit for appeals to State hearing decisions Defendant's

Counsel Dale A. Nowak's erroneously opinions about the law as it relates to State hearing decisions was espoused in his letter to Virginia Ringle, Assistant Chief of the Bureau of State Hearings erroneously asking her to reopen said State hearing after the decision was final. Defendant's Counsel Dale A. Nowak's misguided theories of law as stated to Ms. Virginia Ringle reads, in pertinent part:

"We are unaware of any reasons why the State Hearing Board would not have retained jurisdiction to reopen a matter, such as the matter involving Bertha Washington..."

Please See Exhibit F.

In her response to this erroneous and legally misguided and unconscionable request by Defendant through its Counsel, Dale A. Nowak, the Assistant Chief at the Bureau of State hearings responds by stating, in pertinent part:

"The Ohio Administrative Code Rules that govern our program, prohibit us from reopening an issue once it has been decided through hearing. The only option to revisit an appeal settled, is for the appellant to request an administrative appeal, and then judicial review. That was not done, so the issue of eligibility for reimbursement for the care provided to Ms. Washington from February 5, 2000 through March 28, 2000 is settled and is binding on the agency."

Please See Exhibit G.

Plaintiff Guardian L. Mitchell, in her Cuyahoga County Probate Court appointed guardianship for Bertha L. Washington now deceased, received a binding decision in favor of Decedent, was forced to correspond with the State to enforce a binding decision established through a timely hearing; a decision that to this day has not been adhered to by Defendant. Plaintiff Guardian L. Mitchell, in her right to pursue any and all recourses that would be in the best interest of her guardianship ward made all efforts to go through the proper procedures to force the non-compliant Defendant Western Reserve Area

Agency on Aging to adhere to **two final and binding orders by the State**. When that recourse was exhausted and there was still unbelievable, illegal and defiant non-compliance of two final and binding orders against Defendant Western Reserve Area Agency on Aging, Plaintiff Guardian L. Mitchell placed this egregious act before the Ohio Court system to achieve the remedy already decided upon in two final and binding orders by the State Hearing Board against Defendant. Plaintiff Guardian L. Mitchell's pursuit of justice in the best interest of Mrs. Bertha L. Washington is as far from frivolity as the east is from the west. Plaintiff Guardian L. Mitchell was doing her job as described in Ohio Revised Code Sections 2111.14 and 2111.17. Please See Exhibit H.

There is must not be a claim of frivolity when a guardian is merely working for the best interest of her ward and said person's estate.

IV. GUARDIAN L. MITCHELL CANNOT BE HELD LIABLE FOR FRIVOLOUS CLAIMS UNDER OHIO REVISED CODE SECTION 2323.51 BECAUSE SHE IS NOT A PARTY OF THIS LITIGATION.

As proclaimed by Cuyahoga County Probate Magistrate Charles T. Brown in his decision involving this very case before this Honorable Court and backed by Ohio Revised Code Section 2323.51, Magistrate Brown correctly asserts:

“R.C. 2323.51 authorizes the imposition of sanctions *against a party to a civil action.*” (Emphasis added). Please See Exhibit I, Page 11.

Guardian L. Mitchell was never a party to any action involving said matter on appeal today before this Honorable Court. Guardian L. Mitchell never made herself a party to this matter to which she would be legally held liable. Therefore, Guardian L. Mitchell, not once being a party within this matter and shielded from personal liability under the proper guardianship laws discussed above, can never be held liable for a frivolous claim under Ohio Revised Code Section 2323.51 because she was never a party

to the case nor did she ever hold herself out to be a party to said matter on appeal before this Honorable Court. Henceforth, Ohio Revised Code Section 2323.51 is inapplicable to Guardian L. Mitchell.

V. THE CLAIM FOR RULE 11 SANCTIONS MUST BE BARRED AND DEEMED A MOOT POINT BECAUSE THE ACTIONS AND DECISIONS OF THE LOWER COURTS TO WHICH GIVES RISE TO THIS APPEAL NEVER DISCUSSED AND/OR ADDRESSED RULE 11 SANCTIONS. FURTHERMORE, SAID LOWER COURTS SOLELY BASED ITS DECISION ON SANCTIONS USING ONLY OHIO REVISED CODE SECTION 2323.51.

In the entire argument dealing with sanction, not once did Honorable Cuyahoga County Probate Magistrate Charles T. Brown rule that Defendant's Counsel Dale A. Nowak receive a favorable decision for sanctions using Ohio Civil Rule 11. Throughout the entire ruling by Magistrate Charles T. Brown under the title **LAW ON SANCTIONS**, the only Ohio Revised Code Section used to establish Magistrate Charles T. Brown's decision was Ohio Revised Code Section 2323.51. Please See Exhibit I, Pages 10-14.

The subsequent proceedings before Cuyahoga County Probate Court Judge John E. Corrigan should not have mentioned Rule 11 sanctions because Rule 11 was not used to determine the validity of the sanctions at the Magistrate level of court proceedings. The very proceedings the Honorable Judge John E. Corrigan received upon judicial review. Furthermore, Honorable Judge John E. Corrigan erroneously misspoke when in his Judgment Entry filed June 13, 2005 he stated, "The Court further finds that the Magistrate recommended that Defendant's Post Judgment Motion for Attorney Fees Pursuant to RC 2323.51 and Civil Rule 11 be granted as modified with fees assessed..." Please See Exhibit J.

Not once did Magistrate Brown discuss Ohio Civil Rule 11. That being the case, the claim for sanctions using Ohio Civil Rule 11 must be barred by this Honorable Court.

Proposition of Law No. 111:

Due Process Is Denied a guardian, when collecting debts due the Ward pursuant to statute, when the guardian is subjected to a zealously litigation offense staged by opposing counsel to NOT pay a debt twice awarded to an indigent Ward, in the face of that opposing counsel being told at the outset, and before filing any pleadings NOT to pay the debt to the Ward, that due to the passage of over 1 ½ years since the Ward was awarded TWO favorable decisions of monies due to the Ward, to then try to overturn those decisions clearly outside the 15 day administrative period prescribed to have appealed the decisions was in violation of the administrative rules. Thus, a guardian should not be held liable for defending the Ward and collecting debts due the Ward for litigation that opposing counsel had no authority at law to ever commence.

**VI. DEFENDANT WESTERN RESERVE AREA AGENCY ON AGING
ASSERTION THAT THEY NEVER RECEIVED THE EXPENSE REPORT IN
ORDER FOR IT TO PAY WHAT WAS OWED TO MRS. BERTHA L.
WASHINGTON AND WHAT WAS DEEMED FRIVOLOUS BY DEFENDANT
AND ITS COUNSEL IS ERRONEOUS. THEREBY NEGATING ITS ASSERTION
OF FRIVOLITY.**

Guardian L. Mitchell has all along asserted that communication discussing payment of expenses did in deed occur between Guardian L. Mitchell and Defendant Western Reserve Area Agency on Aging. A. Nowak. (Please See Exhibit E, Page 2 Guardian L. Mitchell's Letter to Ms. Virginia M. Ringel, Assistant Chief of the Bureau of State Hearings). Furthermore, Defendant's Counsel Dale A. Nowak had a copy of the expenses incurred by Mrs. Bertha L. Washington and owed to her by Defendants soon after the decisions of the State Hearing Board. Furthermore, said expenses were incorporated in a Motion before Judge John E. Corrigan in this very case dated April 29, 2002.

Please See Exhibit K.

The crux of Defendant's argument of frivolity based on Defendant not receiving an expense report in order to comply with 2 final orders is defeated based on the severe fact that said expense report was given to them after the decisions were made and in the alternative, documented by the court as early as three (3) years ago. After 5 years of non-compliance with two sound rulings by the State Hearing Board. After continued non-compliance and an illegal attempt to reopen a State Hearing Board matter that, by law, can never be reopened and the senseless litigation by Defendant and its counsel to

lengthen the time of noncompliance with binding orders and also run up a litigation bill that is more than what is owed to the estate of Mrs. Bertha Washington. In the midst of thwarting binding State of Ohio orders and its subsequent derelict actions, I ask this Honorable Court who is indeed guilty of frivolity? The Court must come to but one conclusion. That the Defendant Western Reserve Area Agency on Aging is indeed the only party upon a valid claim of frivolity could be established.

VII. THE EVIDENCE OF DEFENDANT'S ATTORNEY FEES IS EXTREME AND TAINTED WITH FEES NO REASONABLE COURT WOULD ALLOW BECAUSE MUCH OF WHAT THE DEFENDANT IS ASKING IS OUTSIDE THE SCOPE OF THIS LITIGATION.

In Attorney Dale A. Nowak's Evidence of Defendant's Attorney Fees which, ironically, started after and his letter to the State Hearing Board erroneously requesting the reopening of the State hearing case (Please See Exhibit F), said Attorney "peppers" his Attorneys' fees with items the likes of a \$250.00 fee when teaching his paralegal to shepardize laws, numerous 10 minute calls to Ms. Karen Vrtunski billed at \$17.00 per 10 minute call, check Probate Docket via internet at \$85.00 for one-half hour, call court reporter for 10 minutes at \$17.00 per this call and other "liberal" attorney fee assessments and items. Please See Exhibit L.

It is indeed Plaintiff Guardian L. Mitchell's assertion that no attorney's fees be awarded by any means. Yet in the alternative, such liberal and unjustifiable attorney's fees must be stricken from being assessed at all. Furthermore, if this Honorable Court awards attorneys fee's against the estate of Mrs. Bertha L. Washington, a much more strict accounting of said fees must be given with a much more conservative amount. Anything else is unjustifiable, unfair and unreasonable.

To further assert as evidence to our argument against attorney's fees we look toward Swanson v. Swanson (1976), 48 Ohio App.2d 88. In Swanson, the Court sets forth the ruling that an attorney cannot reasonably expect to receive payment for all services provided to a client. Said ruling justifies our assertion before this Honorable Court to disallow Defendant's claim of attorney's fees and in the alternative, to expect a much more conservative accounting of attorney's fees claimed against the estate of Mrs. Bertha L. Washington.

To further cause injury to Plaintiff Guardian L. Mitchell and her rightful quest for justice on behalf of the estate of Mrs. Bertha L. Washington, the Honorable Judge John E. Corrigan would not allow Plaintiff Guardian L. Mitchell to make fair comments and present into evidence material discussions about said attorney's fees. The transcript of said proceedings reads as follows:

THE COURT:...I'm granting that objection and awarding \$170.00 for your fees instead of \$100 that the Magistrate gave.

MR. NOWAK: Thank you, Your Honor.

MS. MITCHELL: Okay, May I respond?

THE COURT: To what?

MS. MITCHELL: May I make a comment about the award?

THE COURT: The fees?

MS. MITCHELL: Yes, please.

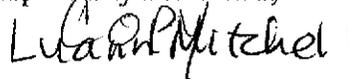
THE COURT: No....

Please See Exhibit M.

CONCLUSION

Hopefully, if nothing else, this Court will stay the recommended six-month suspension, or at a maximum, permit no further sanction than the six-month suspension. It is very frightful that a guardian, now a respondent in a disciplinary proceeding, can be held liable while collecting debts due the estate of the court's Ward and can be held personally liable for actions solely related to administering their duties as guardian. This would leave a very bad precedent and sting to any competent attorneys wanting to act as guardians for the poor, frail and elderly. Further, at no time has any malice been shown to exist in Respondent collecting the debt due the estate of Bertha Washington. As a matter of fact, the panel acknowledges that at no time would the Respondent personally benefit from the collection of the debts due the estate. Such a recommendation to suspend Respondent for six months would do more harm than good to the large number of poor, frail and elderly senior citizens she volunteers to assist and keep them from becoming permanent resident of a nursing home. Respondent's efforts, while at times misunderstood by the panel, were used to permit these senior citizens to continue residing in their own homes until their deaths, to thrive in the outside world, and be at peace until their ultimate deaths.

Respectfully submitted,



Luann Mitchell

Respondent

P.O. Box 08531

Cleveland, Ohio 44108

216) 486-0024

- Auditor Maint & Processing
- Escrow Processing
- Escrow Maintenance
- General Maintenance
- Public Inquiry
- Reports
- Set Up
- Treasurer Maint & Processing

Real type: Real Property number: 661-17-126

Id
 Addr
 Value
 Tax
 Transfer
 Special
 Note
 A/R
 Lender
 Reduction
 CAUV

Property Transfer Card Information						
Instrument Date & Type	To Deeded Owner	Conveyance Number	Deed Number	Exempt Reason	Sales Amount	Modify
12/30/2005 Quit Claim Deed Ex	LAME, INC LAME, INC 375 Balmoral Dr Richmond Hts OH 44143		63662	M	0	
7/31/1989 Warranty Deed	Mitchell Lu Ann				79000	

Last Modified By

UserID	Notes Modified	Category	Subcate...	Tax Year

- New
- Remove
- Modify

Respondent does not own any real property

EXHIBIT A

PROBATE COURT OF CUYAHOGA COUNTY, OHIO

JOHN J. DONNELLY, Presiding Judge

JOHN E. CORRIGAN, Judge

IN THE MATTER OF _____

CASE NO. _____

FIDUCIARY'S ACCEPTANCE

GUARDIAN

(R.C. 2111.14)

I, the undersigned, hereby accept the duties which are required of me by law, and such additional duties as are ordered by the Court having jurisdiction.

AS GUARDIAN OF THE ESTATE, I WILL:

1. Make and file an inventory of the real and personal estate of the ward within 3 months after my appointment.
2. Deposit funds which come into my hands in a lawful depository located within this state.
3. Invest surplus funds in a lawful manner.
4. Make and file an account biennially, or as directed by the Court.
5. File a final account within 30 days after the guardianship is terminated.
6. Inventory any safe deposit box of the ward.
7. Preserve any and all Wills of the Ward as directed by the Court.
8. Expend funds only upon written approval of the Court.
9. Make and file a guardian's report biennially, or as directed by the Court.

AS GUARDIAN OF THE PERSON, I WILL:

1. Protect and control the person of my ward, and make all decisions for the ward based upon the best interest of the ward.
2. Provide suitable maintenance for my ward when necessary.
3. Provide such maintenance and education for my ward as the amount of his estate justifies if the ward is a minor and has no father or mother, or has a father or mother who fails to maintain or educate him/her.
4. Make and file a guardian's report biennially, or as directed by the Court.
5. Obey all orders and judgments of the Court pertaining to the guardianship.

If I change my address or the ward's address, I shall immediately notify Probate Court in writing. I acknowledge that I am subject to removal as such fiduciary if I fail to perform such duties. I also acknowledge that I am subject to criminal penalties for improper conversion of the property which I hold as such fiduciary.

7-12-99

Date

Fiduciary

(A)

EXHIBIT B

PROBATE COURT OF CUYAHOGA COUNTY
Division of the Court of Common Pleas

JOHN J. DONNELLY

PRESIDING JUDGE

JOHN E. CORRIGAN

JUDGE

INSTRUCTIONS TO GUARDIANS

Every guardian should consult with an attorney, during the progress of the administration of the guardianship.

Every person who receives letters of appointment as guardian from the Probate Court becomes an officer of the Court, and as such is responsible by law, and under the bond, to faithfully discharge all duties, among them being the following:

1. Immediately after being appointed and pending investment, as provided by law, the guardian must deposit all funds on hand, or received, in one or more depositories in the name of the guardian of his wards, or ward. Each depository must be a national bank located in the state, or a bank in the state, or trust company operating under the laws of the state. Satisfactory proof of such deposits must be made to the Court when the account is filed. Funds belonging to the ward must be kept separate and distinct from other funds. All wills of the ward must be deposited with the Court for safekeeping.
2. Within three months after the date of the appointment, the guardian shall make and return to this Court an inventory showing all real and personal property belonging to the ward. A form for such purpose is supplied by the Court.
3. No funds shall be used for the support, maintenance or education of a ward unless authorized by the Court.
4. The guardian shall pay all just debts of the ward including Court costs when due from the ward's assets and collect all debts due the ward. The guardian shall also settle and adjust the assets with the approval of the Court.
5. The guardian is required to secure receipts for each and every expenditure. Receipts signed or purported to be signed by the ward will not be allowed as a credit to a guardian in the settlement of accounts.
6. Every guardian is charged by law to manage the estate to the best interests of the ward. Guardians may invest only in "legal investments" authorized by state law.
7. When the ward receives payments from the United States Veterans Administration, an account must be filed each year on the anniversary date of the appointment of the guardian.

Every other guardian shall file an account in this Court of all receipts and disbursements every two years. A receipt for each expenditure must be presented. Satisfactory proof of all balances and investments must be exhibited to the Court. **ALSO REQUIRED AT TIME OF FILING THE ACCOUNT IS A BIENNIAL REPORT ON THE MENTAL AND PHYSICAL CONDITION OF THE WARD.**

8. All guardians of the person only of an adult incompetent must every two years as of their anniversary date of appointment file a biennial report on the mental and physical condition of the ward.
9. Every guardian appointed pursuant to the Uniform Veterans Guardianship Act is especially cautioned to consult with an attorney of the United States Veterans Administration, or with the court, before discharging the duties.
10. Compensation of the guardian and attorney fees should be allowed and paid in the Guardianship, as fixed by Rule or by Order of Court.
11. When a minor ward becomes eighteen years of age, a Final account must be filed, within 30 days.
12. When the ward dies, a guardian has **NO POWER THEREAFTER**, and must file a Final account immediately.

EXHIBIT C

[§ 2111.15.1] § 2111.151. Personal liability of guardian or conservator as to contracts and debts.

(A) If a guardian of the estate, a guardian of the person and estate, a guardian of the person, or a conservator enters into a contract in the representative capacity of the guardian or conservator, if the contract is within the authority of the guardian or conservator, and if the guardian or conservator discloses in the contract that it is being entered into in the representative capacity of the guardian or conservator, the guardian or conservator is not personally liable on the contract, unless the contract otherwise specifies. If the words "guardian," "as guardian," "conservator," "as conservator," or any other word or words indicating representative capacity as a guardian of the estate, a guardian of the person and estate, a guardian of the person, or a conservator are included in a contract following the name or signature of the guardian or conservator, the inclusion is sufficient disclosure for purposes of this division that the contract is being entered into in the guardian's representative capacity as guardian of the estate, guardian of the person and the estate, or guardian of the person or is being entered into in the conservator's representative capacity as conservator.

(B) A guardian of the estate, a guardian of the person and estate, a guardian of the person, or a conservator is not personally liable for any debt of the ward or, in the case of a conservator, the physically infirm, competent adult, unless one or more of the following applies:

- (1) The guardian or conservator agrees to be personally responsible for the debt.
- (2) The debt was incurred for the support of the ward or the physically infirm, competent adult, and the guardian or conservator is liable for that debt because of another legal relationship that gives rise to or results in a duty of support relative to the ward or the physically infirm, competent adult.
- (3) The negligence of the guardian or conservator gave rise to or resulted in the debt.
- (4) An act of the guardian or conservator that was beyond the guardian's or conservator's authority gave rise to or resulted in the debt.

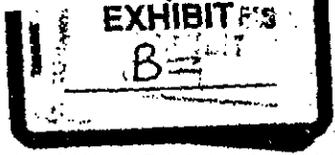
HISTORY: 145 v S 113 (Eff 10-29-93); 146 v H 391. Eff 10-1-96.

§ 2111.17. Suits by guardians.

A guardian may sue in his own name, describing himself as guardian of the ward for whom he sues. When his guardianship ceases, actions or proceedings then pending shall not abate, if the right survives. His successor as guardian, the executor or administrator of the ward, or the ward himself, if the guardianship has terminated other than by the ward's death, shall be made party to the suit or other proceeding as the case requires, in the same manner as executor or administrator is made a party to a similar suit or proceeding where the plaintiff dies during its pendency.

HISTORY: GC § 10507-18; 114 v 320(388); Bureau of Code Revision. Eff 10-1-53.

EXHIBIT D



JUN 23 2000

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County CUYAHOGA	District Hearings Section CLEVELAND	Assistance Group Name BERTHA WASHINGTON	Assistance Group Number 5017512962
Place of Hearing CUYAHOGA CDHS	Initial Hearing Date 05/10/2000	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative BERTHA WASHINGTON LUANN MITCHAL, LGL.GDN. P.O. BOX 08531 CLEVELAND., OH. 44108-	Appellant Representation
	Local Agency Representation

Date Notice Mailed 12/30/1899	Date Received by Local Agency 04/06/2000	Date Received by ODHS 04/20/2000	Date Appeal Summary Received	Date Scheduling Notice Mailed 04/27/2000
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Appeal Number(s)/Program(s)
9942556/MED

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Human Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CLEVELAND District hearing section at 1-800-686-1551.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Human Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43266-0423 or FAX (614) 752-8298. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. (If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)

During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5388, for the local number.

ISSUES:

The Appellant was a recipient of Passport Services through Western Reserve Area Agency on Aging (WRAAA). WRAAA proposed disenrollment on 12/17/99 due to placement in a nursing facility. The guardian requested a hearing on 12/28/99. Passport inappropriately terminated services during the pendency of the appeal despite the guardian's timely request for hearing. A hearing decision was issued 3/28/00 overruling the appeal and finding that WRAAA's 12/17/99 termination of home and community-based waiver services due to Appellant's institutionalization was appropriate. That decision was affirmed by an administrative appeal decision issued 4/27/00. The guardian argues that the Agency should have reinstated benefits pursuant to the state hearing decision of 3/28/00 and that the Appellant should be reimbursed for her cost of care for that time frame. The second ground for appeal is based on WRAAA's refusal to accept re-enrollment forms from the guardian due to notations that the guardian had added to the forms. The guardian further argues that she was denied the right to reapply by WRAAA.

As noted in the 3/28/00 State Hearing Decision, the Agency improperly terminated benefits during the

MAA

Appeal(s): SUSTAINED 9942556	Date Issued 06/21/2000	Compliance 9942556
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Distribution: Original to appellant, one copy to local agency, one copy to district hearing section; one copy to district office; two copies to State Hearings. (Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)
ODHS 4005 (REV. 9/94)

Appeal Number(s)

9942556

course of the appeal. Those benefits should have been reinstated and the Appellant should be reimbursed for services she paid for during that period.

PROCEDURAL MATTERS:

The Guardian previously appealed the termination of Passport benefits. A state hearing was held 2/1/00. A hearing decision was issued 3/28/00, which overruled the appellant's appeal, but noted that the agency inappropriately terminated benefits while the appeal was pending. That decision was affirmed upon appeal on 4/27/00. The guardian requested another hearing on 4/6/00. A hearing was scheduled for 5/10/00, notice was sent on 4/27/00.

SUMMARY OF PROCEEDINGS:

The Appellant was a recipient of Passport Services through Western Reserve Area Agency on Aging (WRAAA). WRAAA proposed disenrollment on 12/17/99 due to placement in a nursing facility. The guardian requested a hearing on 12/28/99. Passport inappropriately terminated services during the pendency of the appeal despite the guardian's timely request for hearing. A hearing decision was issued 3/28/00 overruling the appeal and finding that WRAAA's 12/17/99 termination of home and community-based waiver services due to Appellant's institutionalization was appropriate. That decision was affirmed by an administrative appeal decision issued 4/27/00. The guardian argues that the Agency should have reinstated benefits pursuant to the state hearing decision of 3/28/00 and that the Appellant should be reimbursed for her cost of care for that time frame. The second ground for appeal is based on WRAAA's refusal to accept re-enrollment forms from the guardian due to notations that the guardian had added to the forms. The guardian further argues that she was denied the right to reapply by WRAAA.

WRAAA admitted that services were terminated improperly during the course of the appeal. As a result of the hearing WRAAA reopened the waiver case and had a new assessment completed on 2/8/00. WRAAA gave the guardian a waiver packet to review. On 3/22/00 WRAAA contacted the Guardian regarding the return of the waiver packet. The Guardian said she would fax the documents, but failed to do so until 3/30/00. When the packet was returned on 3/30/00, there were two notations made by the Guardian on the waiver forms to which WRAAA objected. First on the Responsibilities sheet, the Guardian had added "when possible" to the statement that the Appellant would be available to meet with her case manager on a regular basis. On the Authorization to Release Information the Guardian added a requirement that she be notified prior WRAAA contacting any third parties regarding the Appellant. The Guardian required that she be told the nature of the contact, the name, address and phone number of the person they intended to contact, the name of the agency or company and the nature of the information sought. WRAAA felt that the forms as altered were unacceptable, the reassessment was expired and since the hearing decision had been issued overruling the appeal, they closed out the case on 4/5/00. On 4/6/00 there was a conversation between the Guardian and WRAAA on the process for reapplication. The Guardian offered to refax a clean copy of the forms but was told it was unnecessary since a new application would be required.

The Guardian testified that she sent the material back to WRAAA through the mail, but they were not received. After being contacted by WRAAA she faxed the forms to them with the noted alterations.

Appeal Number(s)
99-2558

The Guardian indicated that the alterations were not material alterations, but were made as a courtesy to the Agency. The Appellant is out of her home for most of the day, receiving therapy and would not be available regularly unless an appointment was scheduled. The Guardian also indicated that the doctor's office had told her that they would not release information to WRAAA without the Guardian's involvement which is why she added the notation to the release of information form. After the 4/6/00 telephone call with WRAAA, the Guardian faxed unaltered forms. These forms were returned to her. The Guardian indicated that she was told by another WRAAA employee that a new assessment would not be necessary. The final issue involves the attempt by the Guardian to reapply for waiver services on the Appellant's behalf. The Guardian states that when she contacted WRAAA on 4/18/00 she was denied the right to reapply because the intake worker indicated there was a notation on the computer not to take a new application. The WRAAA representative stated that the reason that no assessment was scheduled at the time of the guardian's call was because WRAAA wanted to have options to offer the Guardian to schedule a date and time. The WRAAA representative stated that telephone calls were made to schedule the assessment and that no contact was made. The Guardian indicated that her office was open during the times at issue and other business was transacted during those times.

FINDINGS OF FACT:

Undisputed Facts:

1. The Appellant was a recipient of Passport Services through Western Reserve Area Agency on Aging (WRAAA).
2. WRAAA proposed disenrollment on 12/17/99 due to placement in a nursing facility.
3. The guardian requested a hearing on 12/28/99. Passport inappropriately terminated services during the pendency of the appeal despite the guardian's timely request for hearing.
4. A hearing decision was issued 3/28/00 overruling the appeal and finding that WRAAA's 12/17/99 termination of home and community-based waiver services due to Appellant's institutionalization was appropriate. That decision was affirmed by an administrative appeal decision issued 4/27/00.
5. WRAAA admitted that services were terminated improperly during the course of the appeal.
6. As a result of the hearing WRAAA reopened the waiver case and had a new assessment completed on 2/8/00.
7. WRAAA gave the guardian a waiver packet to review. On 3/22/00 WRAAA contacted the Guardian regarding the return of the waiver packet. The Guardian said she would fax the documents, but failed to do so until 3/30/00.
8. When the packet was returned on 3/30/00, there were two notations made by the Guardian on the waiver forms to which WRAAA objected. First on the Responsibilities sheet, the Guardian had added "when possible" to the statement that the Appellant would be available to meet with her case manager on a regular basis. On the Authorization to Release Information the Guardian added a requirement that she be notified prior WRAAA contacting any third parties regarding the Appellant. The Guardian required that she be told the nature of the contact, the name, address and phone number of the person they intended to contact, the name of the agency or company and the nature of the information sought.
9. WRAAA felt that the forms as altered were unacceptable, the reassessment was expired and

Appeal Number(s) 9942556

since the hearing decision had been issued overruling the appeal, they closed out the case on 4/5/00.

10. On 4/6/00 there was a conversation between the Guardian and WRAAA on the process for reapplication. The Guardian offered to refax a clean copy of the forms but was told it was unnecessary since a new application would be required.

Disputed Facts:

1. The Guardian testified that she sent the material back to WRAAA through the mail, but they were not received.
2. The Guardian indicated that the alterations were not material alterations, but were made as a courtesy to the Agency. The Appellant is out of her home for most of the day, receiving therapy and would not be available regularly unless an appointment was scheduled. The Guardian also indicated that the doctor's office had told her that they would not release information to WRAAA without the Guardian's involvement which is why she added the notation to the release of information form.
3. The Guardian states that when she contacted WRAAA on 4/18/00 she was denied the right to reapply because the intake worker indicated there was a notation on the computer not to take a new application. The WRAAA representative stated that the reason that no assessment was scheduled at the time of the guardian's call was because WRAAA wanted to have options to offer the Guardian to schedule a date and time.
4. The WRAAA representative stated that telephone calls were made to schedule the assessment and that no contact was made. The Guardian indicated that her office was open during the times at issue and other business was transacted during those times.

CONCLUSIONS OF POLICY:

1. Ohio Admin. Code 5101:6-4-01 states that when a request for a hearing is received within the prior notice period benefits shall not be terminated until a hearing decision is rendered.
2. Ohio Admin. Code 5101:6-4-01 further states that when benefits are reduced, suspended or terminated in violation of the provisions of this rule, benefits shall be reinstated to the previous level.
3. Ohio Admin. Code 5101:6-4-01 requires the agency to respond to reinstatement orders by authorizing benefits within five workdays of receipt of the order.
4. "Reinstatement of benefits to the previous level" means that benefits shall be reinstated retroactive to the date the benefits were reduced, suspended or terminated.
5. Ohio Admin. Code 5101:3-31-04 provides that the application process for the PASSPORT HCBS waiver program begins with a completed application for Medicaid and contact with the passport administrative agency having passport program responsibility resulting in arrangement of an assessment.

ANALYSIS:

The Guardian requested that the hearing decision address Appellant's eligibility for services for the

Bertha L. Washington. Mrs. Washington was approximately ninety years old and resided in her home at 10821 Hampton Road, Cleveland, Ohio. Upon her appointment as guardian, Luann Mitchell began exercising her fiduciary duties as guardian for Bertha Washington. An inventory of Mrs. Washington's assets was filed with the court on July 16, 1999. Mrs. Washington's assets, as reported on July 16, 1999, included real estate valued at approximately \$42,900.00, a Huntington National Bank checking account with a balance of \$348.52 and social security income of approximately \$786.00 per month.

In late 1999 and early 2000 a controversy arose regarding Mrs. Washington's care and the obligation of the WRAAA to provide PASSPORT in home medical nursing service. A State Hearing decision issued June 21, 2000 found that the WRAAA properly interrupted Mrs. Washington's PASSPORT services while she was hospitalized and subsequently placed in a rehabilitation center, however, the State Hearing officer found that WRAAA had improperly interrupted PASSPORT services during the State Hearing appeal process. The State Hearing officer further required compliance and reimbursement for Mrs. Washington's care for the appeal period: February 5, 2000 through March 28, 2000. (Defendant's Exhibit K)

There is no dispute about these facts, however, following the State Hearing decision WRAAA wrote to Attorney Mitchell acknowledging their obligation to reimburse Mrs. Washington's expenses. A request for Mrs. Washington's expenses was made by WRAAA on July 3, 2000, only days after the State Hearing decision.

Rather than submitting the expenses as requested, Attorney Mitchell filed an Ex Parte Motion to Enforce Judgment Against WRAAA in Cuyahoga County Probate Court on April 13, 2001. On July 31, 2001 WRAAA filed a Motion to Dismiss. Limited discovery followed the filing of Attorney Mitchell's Motion. During the course of discovery the scope of the claimed expenses came to light. Attorney Mitchell claimed \$31,527.00 in reimbursable

Appeal Number(s) 9942556

period from her discharge from the nursing facility of 2/5/00 to the issuance of the hearing decision, on 3/28/00 and for the period from 4/18/00 forward based on the claim that she was denied the opportunity to reapply for Passport.

Regarding the first period, the Appellant should have been covered for the period of the appeal and should have received services during that period. Ohio Admin. Code 5101:6-4-01 requires the agency to reinstate benefits to the previous level, retroactive to the date the benefits were reduced, suspended or terminated. WRAAA failed to do that and instead treated the case basically as a new application, requiring all new paperwork. The Appellant should be reimbursed for the care she paid for during this period.

The issue with regard to the 4/18/00 telephone contact between the Guardian and WRAAA is the subject of some dispute. However, WRAAA representatives indicated that the intake worker should create the screen for the assessment and then call back to schedule the actual assessment. It appears that the contact meets the requirements of Ohio Admin. Code 5101:3-31-04 of contact with the passport administrative resulting in arrangement of an assessment. The parties attempted to arrange the assessment at the hearing, but were unable to do so. The parties did agree to arrange the assessment at a mutually agreed time. While the intake worker was unable to arrange the assessment at the time of the call, the WRAAA did not refuse to take the Appellant's application.

HEARING OFFICER'S RECOMMENDATIONS:

Based upon the reasoning set forth above, I recommend that the Agency's decision be reversed and Appeal #9942556 be SUSTAINED.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Finding the hearing officer's decision to be supported by the evidence, the recommendation is adopted. Appeal #9942556 is **SUSTAINED in part.**

For the period from appellant's discharge of 2/5/00 from the nursing facility, to the issuance of the hearing decision on 3/28/00, ~~The Appellant shall be reimbursed for the care she paid for during this period - COMPLIANCE IS REQUIRED~~

O.A.C. Section 5101: 6-7-03 requires prompt compliance with state hearing decisions. For decisions involving public assistance, compliance shall be achieved within 15 calendar days from the date the decision is issued, but in no event later than 90 calendar days from the date of the hearing request. Compliance shall be promptly reported to the Bureau of State Hearings, ODHS, via "State Hearing Compliance," ODHS 4068, accompanied by appropriate documentation.

For the period from 4/18/00 forward the actions of the WRAAA met the requirements of Ohio Admin. Code 5101:3-31-04 and the WRAAA did not refuse to take the Appellant's application.

APPENDIX:

- Exhibit A - 3/28/00 State Hearing Decision
- Exhibit B - 4/27/00 Administrative Appeal Decision
- Exhibit C - 4/6/00 Letter from WRAAA (2 pages)
- Exhibit D - 4/6/00 Letter from Guardian (3 pages)

Appeal Number(s)
9942558

- Exhibit E - WRAAA forms with alterations (2 pages)
- Exhibit F - Progress Notes (2 pages)
- Exhibit G - 11/30/99 letter from WRAAA
- Exhibit H - Timeline (2 pages)
- Exhibit I - Running Record Comments (2 pages)
- Exhibit J - 4/18/00 Letter from Guardian
- Exhibit K - 4/21/00 Letter from WRAAA
- Exhibit L - Affidavits of caregivers (2 pages)



Aristotel Papadimoulis, Hearing Authority

Date Issued: 06/21/2000

PASSPORT 10A
WESTERN RESERVE AAA
925 EUCLID AVENUE, SUITE 550
CLEVELAND, OH, 441151407

EXHIBIT E

LUANN MITCHELL

Attorney at Law ~ Post Office Box 08531~ Cleveland, Ohio 44108
Phone 216.486.0024 ~ Fax 216.486.0024
Advice is a lawyer's only stock and trade

August 30, 2002

Ms. Virginia M. Ringel
Assistant Chief, Bureau of State Hearings
Ohio Job and Family Services
30 East Broad Street
Columbus, Ohio 43215-3414

re: Bertha Washington
Notice of Appeal for
Case Nos. 9932754 and 9942556

Dear Ms. Ringel:

This letter will serve to notify you that Bertha Washington is preserving any and all rights she may have pertaining to your decision of August 21, 2002 concerning the above-referenced matter. Further, this letter serves as notice to you that Mrs. Washington is appealing your decision of August 21, 2002, which sought to unilaterally declare Western Reserve Area Agency (herein after referred to as "WRAAA") to be in compliance with the State Hearing Decisions referenced above and dated March 28, 2000 and June 21, 2000, respectively.

This appeal notes that you have sought to overturn these State Hearing Decisions, which are binding into perpetuity until there has been mandatory compliance, without notice to Mrs. Washington and solely after conferring with the very entity NOT in compliance, WRAAA. You have violated Mrs. Washington's rights afforded her under the United States Constitution, to which we consider a serious infraction, along with intentionally failing to seek strict mandatory compliance from WRAAA, which you are charged with doing.

At all times pertinent, you have been aware of WRAAA's NON-COMPLIANCE because I have continued to telephone you and write you several letters reminding you that it is your duty to enforce compliance, which you failed to do, and continue to fail to do. Then, on the eve of a hearing held in the Probate Court of

Cuyahoga County on August 22, 2002, you attempt to facsimile me a transmission overriding TWO previous adjudicated hearing decisions dated March 28, 2000 and June 21, 2000. Certainly, you conferred, without my knowledge, with WRAAA, and YOU declared compliance although you knew at all times relevant that such was not the case.

As you know, since you had failed to enforce the hearing decisions for payment due to Bertha Washington from WRAAA, it was this office that requested your office sanction WRAAA by withholding funds to them pursuant to state law (see my certified letter to you dated July 13, 2002). Since you have refused to enforce compliance since March 28, 2000, you then unilaterally declare, on August 21, 2002, WRAAA to be in compliance with the hearing decisions dated March 28, 2000 and June 21, 2000. Certainly this unfounded decision prevents both you and WRAAA from further scrutiny for failing to enforce and make payment to Bertha Washington as ORDERED by TWO administrative hearing officers. Your actions, and those of WRAAA are repudiated.

You have been previously notified by letter and telephone calls from this office that there had been positively no compliance met by WRAAA. In fact, on August 22, 2002, WRAAA's attorney, Dale Nowak, admitted to Probate Judge John E. Corrigan during a hearing in that court that WRAAA had incurred \$15,000.00 in legal fees to date for his services as the attorney for WRAAA. This amount DID NOT include the monies spent for ancillary legal expenses, such as copying costs, subpoenas, court reporter fees, and all the voluminous transcripts ordered by WRAAA after each and every multiple hearing we have had in this matter.

Of greater tragedy was the offer by Karen Vrtunski, Assistant Director of the WRAAA for Long-Term Care, to pay only \$3,000.00 to Mrs. Washington towards reimbursement due in the amount of \$31,527.00. Certainly, if WRAAA is utilizing Federal, State and Local funds, along with private funding dollars, earmarked to assist the poor, frail and elderly population, to which 95 year old Bertha L. Washington is a member, to pay its attorneys to fight the very population they are to serve in their own mission statement, then there is an inherent flaw in your agency to give credence to such conduct.

Arithmetically, WRAAA has spent more money to NOT pay Mrs. Washington the TWO State Hearing Decisions rendered in her favor to which WRAAA failed to appeal within 15 days after they were rendered, making those decisions binding into perpetuity against WRAAA until paid in full.

Please provide me with proof of WRAAA's payment to Bertha Washington of monies due to her pursuant to the State Hearing Decisions dated March 28, 2000 and June 21, 2000, along with any other evidence you relied on in unilaterally overturning State Hearing Decisions which are binding on WRAAA into perpetuity until compliance is met. Again, it is noted that in declaring compliance having been met, you are also standing in contravention to your own letters addressed to WRAAA demanding compliance on August 16, 2001 and December 21, 2001.

Please provide me with a copy of the Notice of Compliance filed by WRAAA in the year 2000 and the Notice of Compliance filed on or about August 21, 2002 when you deemed WRAAA in compliance.

As a result, your alleged issuance of compliance on the part of WRAAA on August 21, 20002 is a fraud. My request that you enforce the decisions, in Bertha Washington's favor, must still be achieved. Please do so immediately, and withhold funding to WRAAA until those funds due to Mrs. Washington have been paid to her.

Please let me know if a hearing will be set in this matter. Thank you in advance for your attention to this matter.

Sincerely,

L. Mitchell
Attorney and Court Appointed
Guardian for Bertha Washington

LM/kma

Appeal Number(s)
9942558

- Exhibit E - WRAAA forms with alterations (2 pages)
- Exhibit F - Progress Notes (2 pages)
- Exhibit G - 11/30/99 letter from WRAAA
- Exhibit H - Timeline (2 pages)
- Exhibit I - Running Record Comments (2 pages)
- Exhibit J - 4/18/00 Letter from Guardian
- Exhibit K - 4/21/00 Letter from WRAAA
- Exhibit L - Affidavits of caregivers (2 pages)



Aristotel Papadimoulis, Hearing Authority

Date Issued: 06/21/2000

PASSPORT 10A
WESTERN RESERVE AAA
925 EUCLID AVENUE, SUITE 550
CLEVELAND, OH, 441151407

FINAL ADMINISTRATIVE DECISION AND ORDER:

Finding the hearing officer's decision to be supported by the evidence, the recommendation is adopted. Appeal #9942556 is SUSTAINED in part.

For the period from appellant's discharge of 2/5/00 from the nursing facility, to the issuance of the hearing decision on 3/28/00, The Appellant shall be reimbursed for the care she paid for during this period - **COMPLIANCE IS REQUIRED**

O.A.C. Section 5101: 6-7-03 requires prompt compliance with state hearing decisions. For decisions involving public assistance, compliance shall be achieved within 15 calendar days from the date the decision is issued, but in no event later than 90 calendar days from the date of the hearing request. Compliance shall be promptly reported to the Bureau of State Hearings, ODHS, via "State Hearing Compliance," ODHS 4068, accompanied by appropriate documentation.

Reimbursable Expenditures February 5, 2000 to March 28, 2000

2/5/00	M. Davis - file review and consultation (WCP)	\$	350.00
2/6/00	M. Davis - nutrition consultation		150.00
2/7/00	Home medical equipment and supplies		1,126.00
	Pulse oximeter-\$600.00		
	Bed cradle-\$169.00		
	Automatic Blood Pressure Monitor-\$89.00		
	Glucose meter-\$249.00		
	Automatic Thermometer-\$19.00		
	Adult Day Care and Home Health Aides (\$10/hr. @ 52 days @ 12 hr/day)		6,240.00
	Light Housekeeping (8.5 visits @ \$40.00/visit)		340.00
	Errands (Grocery shopping, pharmacy, etc.) 27 trips @ \$10.00/errand)		270.00
	Emergency Monitoring Response System (includes 2 free consults)		6,000.00
	Home Delivered Meals (Lunch \$6.00; Dinner \$10.00)		832.00
	Minor Home Modifications (wheelchair accessibility)		14,189.00
	Stove	\$ 289.00	
	Ramp	400.00 (front)	
	Ramp	3,300.00 (rear)	
	Electrical	3,100.00	
	Breaker Upgrade	250.00	
	Wheelchair	350.00	
	ADA doors widened	2,250.00	
	Furnace	2,200.00	
	Locks	350.00	
	Kitchen/Bath	900.00	
	Dining Room	800.00	
	(stack pipe/wall repair)		
	Transportation (medical visits)	80.00 (2 @ \$40.00 p/trip)	80.00
	TOTAL (Sub-Total)		29,577.00
2/6/00 to 3/24/00	J.M. Lonergan, M.D.		1,950.00
	TOTAL	\$	31,527.00



HOUSE CALLS UNLIMITED, M.D.

11864 Harbour Light • North Royalton, Ohio 44133

Phone # (440) 356-7899 • Fax # (440) 237-5547

FOR Bertha Washington DATE 7/15/00

ADDRESS _____

R Pulse oximeter \$600⁰⁰
Automatic Blood Pressure Monitor 89⁰⁰
Glucometer 249⁰⁰



16122 LAKESHORE BLVD.
CLEVELAND, OHIO 44110
(216) 481-1286

Automatic thermometer 19⁰⁰

J.M. Lonergan

HOUSE CALLS UNLIMITED, M.D.

11864 Harbour Light • North Royalton, Ohio 44133

Phone # (440) 356-7899 • Fax # (440) 237-5547

FOR Bertha Washington DATE 24/MAY/00

ADDRESS _____

R Consulting fees 02/08/00 to 03/24/00
5 visits at \$300⁰⁰ each = 1500⁰⁰
Initial visit Sunday weekend evening = 450⁰⁰



16122 LAKESHORE BLVD.
CLEVELAND, OHIO 44110
(216) 481-1286

Total 1950⁰⁰

J.M. Lonergan

EXHIBIT F

Bob Taft
Governor



Tom Hayes
Director

30 East Broad Street • Columbus, Ohio 43266-0423
www.state.oh.us/odjfs

December 21, 2001

Karen Vrtunski, Asst. Director
Western Reserve Area Agency on Aging
925 Euclid Avenue
Suite 550
Cleveland, Oh 44115-1407

Dear Ms. Vrtunski,

A state hearing decision was issued June 21, 2000, finding in favor of Ms. Bertha Washington. Ms. Luann Mitchell, Legal Guardian for Ms. Washington, has reported to me that your agency has not yet reimbursed Ms. Washington the amount of money she paid for her care from February 5, 2000 to March 28, 2000, as you were ordered to do by the state hearing decision.

I received verification from the County Department of Job and Family Services that an open Medicaid eligibility span was established for the time period in question, and assumed that your office had complied with the decision. Please take whatever action is necessary to comply with the state hearing decision, and send me verification that you have done so.

As you know, pursuant to Ohio Administrative Code rule 5101:6-7-01 (B), the state hearing decision is binding on the agency. I have attached the state hearing decision, and a compliance form, so that you can more easily report your compliance actions to my office.

Thank you in advance for your compliance with this state hearing decision. Please feel free to contact me at (216) 466-2724 if you wish to discuss this pending compliance action.

Sincerely,

A handwritten signature in cursive script that reads 'Virginia Ringel'.

Virginia Ringel, Asst. Chief
Bureau of State Hearings

Enclosure

c: Luann Mitchell
P.O. Box 08531
Cleveland, Ohio 44108



EXHIBIT G

Bob Taft
Governor

Thomas J. Hayes
Director



30 East Broad Street • Columbus, Ohio 43215-3414
www.state.oh.us/odjfs

September 19, 2002

Dale A. Nowak
Buckingham, Doolittle & Burroughs, LLP
1375 East 9th Street
Suite 1700
Cleveland, Ohio 44114

Dear Mr. Nowak:

I am writing in reference to the letter you sent January 22, 2002, requesting that we reopen the issue of reimbursement for Medical Expenses for Ms. Bertha Washington. I apologize for this great delay in responding to your request. The letter you sent was inadvertently filed with other items and just recently found.

The Ohio Administrative Code Rules that govern our program, prohibit us from reopening an issue once it has been decided through hearing. The only option to revisit an appeal already settled, is for the appellant to request an administrative appeal, and then judicial review. That was not done, so the issue of eligibility for reimbursement for care provided to Ms. Washington from February 5, 2000 through March 28, 2000, is settled and is binding on the agency.

There will be, however, a new hearing scheduled the week of November 19, 2002, to adjudicate the issue of specific requests for reimbursement that have been denied, or not yet paid. The delay in scheduling is due to the unavailability of Ms. Washington's representative.

Again, please forgive the delay in this response.

Sincerely,
Virginia M Ringel

Virginia Ringel, Asst. Chief
Bureau of State Hearings

c: Karen Vrtunski, WRAAA

An Equal Opportunity Employer

Bob Taft
Governor



Tom Hayes
Director

30 East Broad Street • Columbus, Ohio 43266-0423
www.state.oh.us/odjfs

December 21, 2001

Karen Vrtunski, Asst. Director
Western Reserve Area Agency on Aging
925 Euclid Avenue
Suite 550
Cleveland, Oh 44115-1407

Dear Ms. Vrtunski,

A state hearing decision was issued June 21, 2000, finding in favor of Ms. Bertha Washington. Ms. Luann Mitchell, Legal Guardian for Ms. Washington, has reported to me that your agency has not yet reimbursed Ms. Washington the amount of money she paid for her care from February 5, 200 to March 28, 2000, as you were ordered to do by the state hearing decision.

I received verification from the County Department of Job and Family Services that an open Medicaid eligibility span was established for the time period in question, and assumed that your office had complied with the decision. Please take whatever action is necessary to comply with the state hearing decision, and send me verification that you have done so.

As you know, pursuant to Ohio Administrative Code rule 5101:6-7-01 (B), the state hearing decision is binding on the agency. I have attached the state hearing decision, and a compliance form, so that you can more easily report your compliance actions to my office.

Thank you in advance for your compliance with this state hearing decision. Please feel free to contact me at (216) 466-2724 if you wish to discuss this pending compliance action.

Sincerely,

A handwritten signature in black ink that reads "Virginia Ringel". The signature is written in a cursive, flowing style.

Virginia Ringel, Asst. Chief
Bureau of State Hearings

Enclosure

c: Luann Mitchell
P.O. Box 08531
Cleveland, Ohio 44108

EXHIBIT H

PROBATE COURT OF CUYAHOGA COUNTY, OHIO

JOHN J. DONNELLY, Presiding Judge
JOHN E. CORRIGAN, Judge

IN THE MATTER OF _____

CASE NO. _____

FIDUCIARY'S ACCEPTANCE

GUARDIAN

(R.C. 2111.14)

I, the undersigned, hereby accept the duties which are required of me by law, and such additional duties as are ordered by the Court having jurisdiction.

AS GUARDIAN OF THE ESTATE, I WILL:

1. Make and file an inventory of the real and personal estate of the ward within 3 months after my appointment.
2. Deposit funds which come into my hands in a lawful depository located within this state.
3. Invest surplus funds in a lawful manner.
4. Make and file an account biennially, or as directed by the Court.
5. File a final account within 30 days after the guardianship is terminated.
6. Inventory any safe deposit box of the ward.
7. Preserve any and all Wills of the Ward as directed by the Court.
8. Expend funds only upon written approval of the Court.
9. Make and file a guardian's report biennially, or as directed by the Court.

AS GUARDIAN OF THE PERSON, I WILL:

1. Protect and control the person of my ward, and make all decisions for the ward based upon the best interest of the ward. *
2. Provide suitable maintenance for my ward when necessary.
3. Provide such maintenance and education for my ward as the amount of his estate justifies if the ward is a minor and has no father or mother, or has a father or mother who fails to maintain or educate him/her.
4. Make and file a guardian's report biennially, or as directed by the Court.
5. Obey all orders and judgments of the Court pertaining to the guardianship.

If I change my address or the ward's address, I shall immediately notify Probate Court in writing. I acknowledge that I am subject to removal as such fiduciary if I fail to perform such duties. I also acknowledge that I am subject to possible penalties for improper conversion of the property which I hold as such fiduciary.

7-12-99

Date

Fiduciary

EXHIBIT I

APR 6 2005

CUYAHOGA COUNTY, O.

IN THE PROBATE COURT
DIVISION OF THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

IN THE MATTER OF

Case No. 1999 GDN 14181 B

BERTHA L. WASHINGTON
INCOMPETENT

And

MITCHELL v.
WESTERN RESERVE AREA AGENCY OF AGING

2002 ADV 59296

MAGISTRATE'S DECISION

Case number 2002 ADV 59296 and 1999 GDN 14181 B were remanded by the Eighth District Court of Appeals for a hearing on Western Reserve Area Agency of Aging's Motion for Attorney Fees and Sanctions pursuant to RC 2323.51 and Civil Rule 11. The guardianship was also remanded to hear Attorney Mitchell's Application for Guardian and Attorney Fees. The Court of Appeals case number is CA 03083837. In addition Attorney Mitchell filed a Motion for Immediate Hearing and Order of Relief in both cases on September 29, 2004.

Western Reserve Area Agency of Aging, hereafter WRAAA filed its Motion to Strike and Dismiss on October 7, 2004. The case was heard on February 9, 2005 through February 17, 2005. The hearing was transcribed by Laura L. Ware of Ware Reporting Service. The transcript was not filed with the court.

(A) FACTUAL BACKGROUND

A factual and procedural history is necessary to fully appreciate the issues facing the court. In 1999 Attorney Luann Mitchell was appointed guardian of the person and estate of

expenses as a result of the six week period WRAAA was ordered to reimburse Mrs. Washington for her care. WRAAA requested documentation to support these claims along with the identity of the service providers. These discovery attempts were thwarted by Attorney Mitchell.

On November 14, 2001 a hearing was held on WRAAA's Motion to Dismiss. The Report of Magistrate was issued on December 14, 2001. This magistrate recommended the Ex Parte Motion to Enforce Judgment Against WRAAA be dismissed for lack of jurisdiction. No objections to this report were ever made, and the Probate Judge adopted the Magistrate's Report and ordered the dismissal of Attorney Mitchell's motion on January 4, 2002.

On February 15, 2002, Attorney Mitchell filed a Complaint for Declaratory Judgment in Cuyahoga County Probate Court. The action sought an order from Probate Court to enforce the decision of the State Hearing Board against WRAAA and order payment of \$31,527.00 to Mrs. Washington. WRAAA filed a Motion to Dismiss the Declaratory Judgment on March 22, 2002. Throughout the time since the State Hearing decision, WRAAA repeatedly sought evidence of the expenses incurred for Mrs. Washington in an effort to comply with the State Hearing decision. Likewise during the course of the litigation of the Declaratory Judgment, WRAAA sought discovery from Attorney Mitchell. Their efforts were thwarted by Attorney Mitchell.

In mid-June 2002, Attorney Mitchell took Mrs. Washington, who was confined to a wheelchair, to the office of Judge Richard J. McMonagle. A conversation between Attorney Mitchell and Judge McMonagle took place. Shortly thereafter, a hearing on Judge McMonagle's Special Docket took place. During the course of the hearing Judge McMonagle expressed on the record that he scheduled the hearing because he was under the impression Mrs. Washington's home was in peril. He also indicated that he was unaware that an action was pending in the Probate Court. Judge McMonagle dismissed Attorney Mitchell's action

from his Special Docket. At or about the same time, Attorney Mitchell dismissed her Complaint Declaratory Judgment in Probate Court by filing a Civil Rule 41 (A) Notice of Dismissal.

On July 16, 2002, WRAAA filed its Post Judgment Motion for Attorney Fees and Sanctions pursuant to Ohio Revised Code 2323.51 and Civil Rule 11. Attorney Mitchell resisted discovery on this motion as well. Sanctions for failure to attend a deposition were imposed against Attorney Mitchell. These sanctions have yet to be paid. Ultimately, Attorney Mitchell's deposition was scheduled in the courtroom of Judge John E. Corrigan of the Probate Court. Throughout 2002 and 2003 several attempts were made by the Department of Jobs and Family Service to obtain the expense information from Attorney Mitchell. On November 19, 2002, a hearing before the State Hearing Board was scheduled. The scope of this hearing was to be the amount of the expenses Mrs. Washington would be entitled to from WRAAA. This hearing was unable to be scheduled "due to the unavailability of Mrs. Washington's representation". (Plaintiff's Exhibit E). The proposed hearing did not take place, due to Attorney Mitchell's insistence that the hearing deal only with WRAAA's non-compliance, not expenses. (Plaintiff's Exhibit FF, D, HH.)

Following the hearing on Sanctions in Probate Court, Attorney Mitchell filed a Writ of Mandamus in the Ohio Eighth District Court of Appeals seeking again the same relief; reimbursement of \$31,527.00 in expenses from WRAAA. This action was also dismissed. On October 27, 2003 the Probate Court issued an order regarding the matters pending in Probate Court. This order was appealed and is currently before the Probate Court on remand from the Eight District Court of Appeals.

On November 6, 2003 Mrs. Bertha L. Washington died.

(B) MOTION FOR SANCTIONS

WRAAA filed its Motion for Attorney Fees and Costs pursuant to RC 2323.51 and

Civil Rule 11. A hearing on that motion was heard as a result of the ordered remand from the Eighth District Court of Appeals. During the course of the hearing several significant issues were clarified.

It became clear that Attorney Mitchell pursued her administrative remedy as prescribed by Administrative Code Section 5101:6-1 to 5101:6-9 in early 2000. This process culminated with the State Hearing officer's decision of June 21, 2000 which required WRAAA to pay Mrs. Washington's PASSPORT-like expenses incurred from February 5, 2000 through March 28, 2000. Although WRAAA sought information regarding those expenses, Attorney Mitchell never supplied that information.

Attorney Mitchell filed the Ex Parte Motion to Enforce Judgment against WRAAA in Probate Court on April 13, 2001. This motion was dismissed by the court on January 4, 2002. She then filed a Complaint for Declaratory Judgment on February 15, 2002, seeking the same relief. After several discovery disputes and an attempt to pursue the same motion on the Special Docket of the General Division of Common Pleas Court, she voluntarily dismissed the Declaratory Judgment in Probate Court on June 26, 2002 pursuant to Civil Rule 41 (A).

WRAAA filed its Motion for Sanctions on July 16, 2002. Attorney Mitchell again thwarted discovery attempts during the pendency of the Sanctions Motion. At the hearing on the Motion for Sanctions, the second question posed to Attorney Mitchell was to state her address. Initially she refused. Upon being ordered to disclose her residence she offered the address of 2760 Brainard, Pepper Pike. Later in the hearing, evidence was offered to show she had been served a subpoena duces tecum at 2760 Brainard Hills Drive, Pepper Pike. Attorney Mitchell later recanted this testimony, and testified that she no longer resides at the Brainard Hills address because she and her husband have been separated for sometime. In her case in chief, Attorney Mitchell further pointed out that the address on Brainard Hills Drive is no longer in her name.

This type of misleading and circuitous testimony caused the hearing to last four and one-half days. When questioned on a number of areas Ms Mitchell had no recollection of events pertaining to the WRAAA controversy. This lack of recollections was completely unbelievable. Mr. Nowak questioned Attorney Mitchell about the legal research she performed in preparation of the filings she made in Probate Court. Although her fee bill reflected a request for over \$57,000.00 in attorney fees as Bertha L. Washington's guardian, she could not point to any time devoted to legal research in preparation for filing her action with the court.

The crux of the issue of all the litigation centered on Attorney Mitchell's claimed expenses of \$31,527.00 which she sought from WRAAA pursuant to the June 21, 2000 State Hearing decision. Attorney Mitchell supported this claim with her own affidavit and the affidavit of two health care workers. Attorney Mitchell listed several health care workers, but she was unable to provide their addresses, phone numbers, or social security numbers. She testified that these workers were paid in cash.

When questioned about the invoices from Dr. J.M. Lonergan, Attorney Mitchell testified that Dr. J.M. Lonergan provided medical service to a number of her clients and to herself personally. Upon further questioning Attorney Mitchell testified that she and Dr. Lonergan "bartered" services. This is why cancelled checks were not available. She testified that the barter arrangement was extended to all her clients for his services. Dr. Lonergan did not testify at the sanctions hearing.

Mr. Nowak further questioned Attorney Mitchell about the health care workers who assisted Mrs. Washington. These workers were allegedly paid in cash for their services. Attorney Mitchell submitted an application for attorney's fees with the Probate Court on April 18, 2001. Mr. Nowak cross-examined her regarding the time entries made in her application. Attorney Mitchell testified that she never personally provided Mrs. Washington health care

services and that she did not include any time or compensation for herself in the \$31,527.00 claimed reimbursement. However, the time entries on February 26, 2000 indicated that the health aid worker did not come to work because of stress. The next entry shows "LM" provided health care services for Mrs. Washington for a four hour period. When asked to identify the health care worker with the initials "LM", Attorney Mitchell could not recall that person's identity. When asked if "LM" was Luann Mitchell, Attorney Mitchell denied providing those services. This magistrate questioned Attorney Mitchell about the identity of the health aid worker "LM". Most health aid workers were paid approximately ten dollars per hour, however, the notation on the time entry show "LM" was paid \$155.00 per hour. Which coincidentally is the same rate Attorney Mitchell charged the guardianship for her services. The unusually high payment to the health aid worker "LM" did not refresh Attorney Mitchell's recollection as to "LM"'s identity. She testified, however, that "LM" was not Luann Mitchell. This testimony was utterly ridiculous and incredible. It is clear from the time entries that Luann Mitchell cared for Mrs. Washington after a health aid worker called off. She also sought to charge the guardianship for these services at the rate of an attorney, \$155.00 per hour. Her total lack of recollection was contemptible.

Additionally, several home repairs were allegedly performed on Mrs. Washington's home. Attorney Mitchell indicated that she paid for these services with counter checks drawn on Mrs. Washington's guardian checking account. These counter checks were written to the providers at the time the services were performed: between February 5, 2000 and March 28, 2000. She testified that these checks were knowingly written with insufficient funds in Mrs. Washington's account, however, the service providers graciously held the checks without cashing them. According to Attorney Mitchell on August 19, 2002, over two years later, she contacted each of these providers and asked them to return the counter checks. She testified the majority of the care providers sent the uncashed checks back to her. When questioned

which care providers were issued the counter checks she could not recall and when asked their location she could not recall. When asked about the counter checks, she testified that the checks were either destroyed or lost. The loss or destruction of the counter checks was either by Attorney Mitchell or her secretary. When asked to identify her secretary she could not recall her name or address. The destruction or lost of these counter checks occurred sometime between August 2002 and the present time. Attorney Mitchell acknowledged that litigation with WRAAA had been pending throughout that entire time. Attorney Mitchell's explanation of the counter checks, their issuance, their return over two years later, and their subsequent loss or destruction is completely incredible.

What is clear from Attorney Mitchell's testimony is that she never accepted the offer to allow a hearing with the State Hearing Board to review her evidence of claimed expenses. Instead, she filed an Ex Parte Motion to Enforce Judgment in Probate Court, a Declaratory Judgment in Probate Court, an Action on the Special Docket of the Common Pleas Court and a Writ Mandamus in the Eight District Court of Appeals.

WRAAA seeks sanctions for the fees defending against Attorney Mitchell's actions related only to the Complaint for Declaratory Judgment and the prosecution of their Motion for Sanctions. Dale Nowak represented WRAAA throughout these proceedings. His request for sanctions does not include his time defending the Ex Parte Motion to Enforce Judgment in Probate Court, nor the time in the Court of Appeals in defense of the Writ of Mandamus or the Special Docket hearing with Judge McMonagle in Common Pleas Court.

Mr. Nowak's fees and costs are separated into three parts. The defense of the Declaratory Judgment Action in Probate Court required sixty-six hours. The Post Judgment Motion for Sanctions required one hundred and twenty hours. The trial on the matter required thirty-one hours. Additionally, he has incurred \$4,104.79 in related case expenses. Mr. Nowak testified that his hourly rate is \$170.00 per hour. His requested fee as sanctions are

\$36,890.00 plus costs of \$4,104.79 for a total of \$40,994.79.

It is clear that the majority of Mr. Nowak's time was spent pursuing the Motion for Sanctions and the trial of that matter. The discovery delays, the evasive conduct, the circuitous answers and the overall lack of cooperation by Attorney Mitchell caused those fees to be expended. Attorney Mitchell's conduct at the hearing was highlighted to give a flavor for her continuous course of conduct for those three years of litigation. Mr. Nowak bears the burden of proof on his Motion for Sanctions, therefore he deems his actions and time spent as reasonably related to meet his burden of proof.

(C) LUANN MITCHELL'S APPLICATION FOR GUARDIAN AND ATTORNEY FEES

The Eighth District Court of Appeals ordered a hearing on Attorney Mitchell's request for fees from the guardianship. A hearing was held on February 17, 2005. Attorney Mitchell testified that she is seeking fees of \$13,468.75 for one hundred and seven and three quarter hours of service at the rate of \$125.00 per hour. The statement of time is contained in her Plaintiff's Exhibit 1. She testified that she benefitted the guardianship with her services by obtaining two judgments against Patricia Anderson which included turning over oven roasters, plates, cups, sauces, bread and butter plates.

In addition to her request for fees, Attorney Mitchell requested leave of court to supplement her fee bill to include additional time she had not yet billed for in the guardianship. A two week leave was granted to file the supplemental application. No application has been filed.

Attorney Mitchell acknowledged all of Mrs. Washington's assets had been expended on her care. She believes that Mrs. Washington's decedent's estate contained no assets. Attorney Mitchell seeks compensation from the Court's Indigent Fund to pay her for attorney fees.

LAW ON SANCTIONS

Ohio Revised Code Section 2323.51 permitted the imposition of attorney fees for frivolous conduct. The statute prescribes the following:

- (2) An award may be made pursuant to division (B)(1) of this section upon the motion of a party to a civil action or an appeal of the type described in that division or on the court's own initiative, but only after the court does all of the following:
 - (a) Sets a date for a hearing to be conducted in accordance with division (B)(2)(c) of this section, to determine whether particular conduct was frivolous, to determine, if the conduct was frivolous, whether any party was adversely affected by it, and to determine, if an award is to be made, the amount of that award;
 - (b) Gives notice of the date of the hearing described in division (B)(2)(a) of this section to each party or counsel of record who allegedly engaged in frivolous conduct and to each party who allegedly was adversely affected by frivolous conduct;
 - (c) Conducts the hearing described in division (B)(2)(a) of this section in accordance with this division, allows the parties and counsel of record involved to present any relevant evidence at the hearing, including evidence of the type described in division (B)(5) of this section, determines that the conduct was involved was frivolous and that a party was adversely affected, and the determines the amount of the award to be made.

In the instant matter, WRAAA requests fees as sanctions against Attorney Luann Mitchell for her conduct regarding case number 2003 ADV 59296. WRAAA argues that Attorney Mitchell had no legal basis to file the Complaint Declaratory for Judgment on April 13, 2003, and therefore argues that sanctions are warranted.

The controversy at the root of this dispute involves Attorney Mitchell's claimed reimbursement for expenses of Mrs. Washington, her ward for the period of February 5, 2000 through March 28, 2000. Initially Attorney Mitchell followed the prescribed procedures under the Administrative Code until a certain point. She sought the administrative remedy for her ward under Administrative Code Section 5101:6-1 through 5101:6-9, which was proper. However, upon receipt of the favorable decision she failed to offer any evidence to support a calculation of the expenses to be reimbursed. An appeal to present her evidence was available to her pursuant to Administrative Code Section 5101:6-1 through 5101:6-9. After exhausting this administrative remedy she could have appealed to Common Pleas Court pursuant to R.C.

5101.35

Rather than offering her proof through the administrative process, she filed the Ex Parte Motion to Enforce Judgment against WRAAA in the Probate Court. This was properly dismissed on November 14, 2001 for lack of jurisdiction. Attorney Mitchell had failed to properly exhaust her administrative remedy which is required by law. BP Communication Alaska, Inc. v. Cent. Collection Agency (Eighth District Court of Appeals 2000), 136 Ohio App. 3d 807.

Attorney Mitchell ignored the written requests of WRAAA to submit her expenses. She ignored the instructions of the representative of Ohio Jobs and Family Services, and she ignored the well settled law of Ohio. Instead, Attorney Mitchell filed her Complaint for Declaratory Judgment. When WRAAA filed a detailed Motion to Dismiss, Attorney Mitchell recklessly continued her course conduct. Upon cross examination, Attorney Mitchell was asked to identify any legal research performed in preparation of this action. No legal research time was reflected in her fees statement. The Declaratory Judgment Action filed by Attorney Mitchell was dismissed pursuant to Civil Rule 41 (A). This dismissal included a statement that :

"The reason for the dismissal is because this court has determined it does not have the authority or jurisdiction to enforce two administrative State Hearing decisions".

~~*~~ R.C. 2323.51 authorizes the imposition of sanctions against a party to a civil action. The trial court may award attorney fees to a party adversely affected by the conduct of another party's counsel. This allows a mechanism to place blame directly where fault lies. Cseplo v. Steinfels (1996), 116 Ohio App. 3d 384. The trial court must determine whether a party's conduct was intended to harass or injure. Ceol v. Zion Indust., Inc., (1992), 81 Ohio App. 3d 286. Clearly, Attorney Mitchell was seeking to injure WRAAA by requiring payment for unprovable expenses. Much of her conduct was harassing and reckless. In addition, whether a party has a good-faith argument under law is a good question of law. Lable & Co. v. Flowers (1995), 104 Ohio App. 3d 227. Attorney Mitchell's decision to file the Complaint

for Declaratory Judgment seeking payment from WRAAA for expenses that were clearly subject to the process prescribed under the Administrative Code was without any legal merit. The proper legal procedure was previously outlined. Attorney Mitchell articulated no legal basis upon which she filed this action. Clearly, no new factual evidence existed from the time of the dismissal of the Ex Parte Motion to Enforce Judgment against WRAAA and the filing of the Complaint for Declaratory Judgment.

When given the opportunity on cross-examination to outline her legal basis, she offered nothing to support her action. In addition, her subsequent actions of filing a Writ of Mandamus and filing an action on the Special Docket of the Common Pleas Court demonstrate her relentless harassment of WRAAA. Attorney Mitchell's conduct is that of the proverbial bull in a china shop; reckless, willful, deliberate and unhalting.

The fact of this case resembles those of Master v. Chalko (Ohio App. 8 Dist.), 2000 wl 573200. In the Chalko case, the Eighth District Court of Appeals found the attorney's zealous representation crossed the line into frivolous conduct. So too in this matter, Attorney Mitchell's actions in zealously representing her ward, Mrs. Washington, were proper during the State Hearing process. Her actions crossed the line upon failing to exhaust her administrative remedies. Her first misstep was the filing of the Ex Parte Motion to Enforce Judgment against WRAAA. This was dismissed for lack of jurisdiction. Thereafter, the second misstep occurred when, without additional evidence or legal research, a Complaint for Declaratory Judgment was filed only weeks after the earlier dismissal. Had Attorney Mitchell filed her Civ. R. 41(A) dismissal upon receipt and review of WRAAA's Motion to Dismiss, her conduct might have been tolerable. However, she persisted with this action.

Frivolous conduct as defined by R.C. 2323.51(A)(2)(a)(1) is:

- (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal.
- (ii) It is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

During the four and one-half day hearing on the Remanded Motion for Sanctions, Attorney Mitchell provided no evidence or legal argument that her Complaint for Declaratory Judgment was supported by any argument for an extension, modification, or reversal of existing law.

Clearly, the continued prosecution of this action is frivolous conduct.

The frivolity of her conduct aside, the dubious explanation of her claimed expenses for Mrs. Washington, her discovery avoidance, and her evasiveness while under oath all serve to exacerbate the matter. No plausible explanation or special circumstances were offered. Attorney Mitchell's conduct at the hearing served to increase the costs of this litigation. Her conduct required WRAAA to expend more fees and costs. Rather than mitigate the sanctions process Attorney Mitchell amplified it. The Court of Appeals stated in the Chalko case:

"It would be far more chilling on the rights of litigants for the courts to look the other way and fail to sanction this sort of abuse and reprehensible conduct."

WRAAA has offered evidence to support their request for attorney fees as sanctions. Their request is for \$40,994.79. This figure calculates as the fees at the hourly rate of \$170.00 per hour plus expenses of \$4,104.79. DR 2-106 requires the court to review the reasonableness of attorney fees. Applying the standards of DR 2-106, a more reasonable rate would be \$100.00 per hour plus expenses. This modification would result in fees \$21,700.00 plus case expenses of \$4,104.79 for a total of \$25,804.79. As stated earlier in this decision the majority of the time spent was caused by Attorney Mitchell's failure to reasonably cooperate with the process. The four and one-half day hearing could have been conducted in a single day had Attorney Mitchell cooperated.

LAW ON GUARDIAN FEES

DR 2-106 sets forth the factors the court should consider in determining attorney fees. In this case, Attorney Mitchell filed her request for \$13,468.75 for her services to the guardian. She sought leave of court to supplement this bill, however, she failed to timely file such an additional bill. The guardian apparently expended all of Mrs. Washington's assets on

her care during her lifetime. No funds are available to pay Attorney Mitchell's bill. The fees requested related to collecting judgments for the benefit of Mrs. Washington. The value of those judgments are approximately \$4,575.00 according to Attorney Mitchell's testimony. To award over \$13,000.00 in fees for collecting a \$4,575.00 judgment is unreasonable. The case of Swanson v. Swanson (1976), 48 Ohio App. 2d 88, sets forth the proposition that an attorney cannot reasonably expect to be paid for all the services provided to a client.

The utilization of the Probate Court Indigent Fund to pay the fees of Attorney Mitchell seems equally unreasonable. Attorney Mitchell performed these services with the full knowledge of Mrs. Washington's assets and income. As stated in Swanson, an attorney cannot expect to be paid for all of their services. Therefore, it is recommended that Attorney Mitchell's fees be approved in the amount of \$1,525.00. This amount is one-third of the amount collected for her ward. This fee is more reasonable in light of the results obtained. This fee can be asserted as a claim against the estate of Bertha L. Washington, however, the Court Indigent Fund should not be responsible for this fee.

Attorney Mitchell made a motion in her case for attorney fees to admit into evidence all exhibits excluded in the action against WRAAA. No one was present to oppose this motion. The ruling was held in abeyance pending the supplemental filing Ms. Mitchell requested. No supplemental fee application was ever filed. Her Oral Motion to admit the excluded evidence is granted and the evidence has been reviewed as to the guardianship fee case only. Some of the evidence was excluded in the Sanctions case, and those rulings should stand.

RECOMMENDATION

Therefore, based on the foregoing facts and applicable law it is the recommendation of this magistrate that the Motion for Attorney Fees and Sanctions filed by WRAAA against Attorney Luann Mitchell be GRANTED as modified.

It is recommended the Sanctions amount be \$25,804.79 attorney fees plus the costs of

this proceeding.

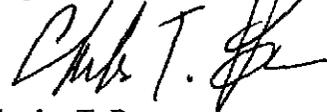
It is further recommended that Attorney Mitchell's Motion for Attorney Fees in the Guardianship of Bertha L. Washington be GRANTED as modified in the amount of \$1,525.00. This fee award should be asserted as a claim against the estate of Bertha Washington.

It is further recommended that the two pending Motions for Immediate Hearing and Order of Relief be DISMISSED as having been withdrawn by counsel. The dismissal of these motions then renders the Motions to Strike and Dismiss filed by WRAAA as Moot.

Pursuant to Civil Rule 53 (E)(2), a party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law unless the party timely objects to that finding or conclusion as required by Civil Rule 53 (E)(3).

APR 6 2005

Respectfully submitted,



Charles T. Brown
Probate Magistrate

Copies mailed to:

**Luann Mitchell
P.O. Box 08531
Cleveland, Ohio 44108**

**Dale Nowak
One Cleveland Center, Suite 1700
1375 East Ninth Street
Cleveland, Ohio 44114**

EXHIBIT J

IN THE PROBATE COURT DIVISION
OF THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

PROBATE COURT
FILED
JUN 13 2005
CUYAHOGA COUNTY, O.

L. MITCHELL, Guardian For
Bertha L. Washington, Incompetent,

Plaintiff,

vs.

WESTERN RESERVE AREA AGENCY
ON AGING,

Defendant.

CASE NO. 2002 ADV 59296

JUDGE JOHN E. CORRIGAN

IN THE MATTER OF BERTHA L.

WASHINGTON, INCOMPETENT.

CASE NO. 1999 GDN 14181 B

JUDGE JOHN E. CORRIGAN

JUDGMENT ENTRY

This matter is before the Court on **Objection of Western Reserve Area Agency On Aging to the Magistrate's Report of April 6, 2005**, filed April 19, 2005, by Dale A. Nowak, attorney for Defendant Western Reserve Area Agency on Aging.

The Court finds after reviewing the entire file including the Magistrate's Decision, conducting a hearing on the objections to the Magistrate's Decision, and listening to the arguments of counsel, that the objection is well-taken and should be sustained and the decision of the Magistrate adopted as modified as the decision of this Court.

The Court further finds that the Magistrate recommended that Defendant's Post Judgment Motion for Attorney Fees Pursuant to RC 2323.51 and Civil Rule 11 be granted as modified with fees assessed at a rate of \$100.00 per hour on two hundred seventeen hours of work totaling \$25, 804.79 including case expenses which equaled \$4,104.79.

DOCKETED

The Court further finds that WRAAA filed an objection to that portion of the Magistrate's Decision recommending attorney fees at a rate of \$100.00 per hour instead of the requested \$170.00 per hour. A hearing on the matter was held before this Court on June 13, 2005.

The Court further finds, given the nature of litigation in this matter, that WRAAA should be allowed a more reasonable attorney fee award at an hourly rate of \$170.00. Defendant's Post Judgment Motion for Attorney Fees Pursuant to RC 2323.51 and Civil Rule 11 should be granted as modified in the amount \$36,890.00 with case expenses equaling \$4,104.79 for a total of \$40,994.79.

Therefore, it is **ORDERED** that the Objection of Western Reserve Area Agency On Aging to the Magistrate's Report of April 6, 2005 is **SUSTAINED** as to the award of attorney fees in the amount of \$170.00 per hour and the Magistrate's Decision is **ADOPTED AS MODIFIED** as the decision of this Court.

It is further **ORDERED** that Defendant's Post Judgment Motion for Attorney Fees Pursuant to RC 2323.51 and Civil Rule 11 filed by WRAAA against Luann Mitchell is **GRANTED** as modified in the amount \$36,890.00 with case expenses equaling \$4,104.79 for a total of **\$40,994.79** due and owing.

It is finally **ORDERED** that the Clerk of Court shall serve upon all interested parties notice of this judgment and date of entry pursuant to Civil Rule 58(B).

JUN 13 2005
Date

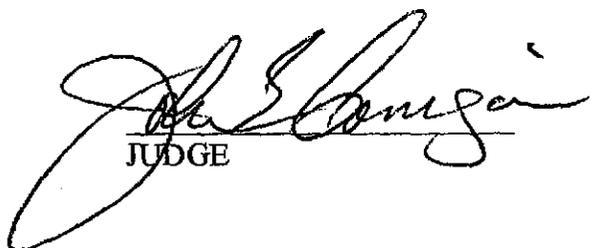

JUDGE

EXHIBIT K

PROBATE COURT
CUYAHOGA CTY., O.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

APR 29 2002

RECEIVED FOR FILING

L. MITCHELL, Guardian)	CASE NO. 2002 ADV 0059296
for Bertha L. Washington)	
)	JUDGE JOHN E. CORRIGAN
Plaintiff,)	
)	
vs.)	<u>PLAINTIFF'S MOTION FOR</u>
)	<u>SUMMARY JUDGMENT AND</u>
)	<u>MOTION IN OPPOSITION TO</u>
)	<u>DEFENDANT'S MOTION TO DISMISS</u>
WESTERN RESERVE AREA AGENCY)	
ON AGING)	
)	
Defendant.)	
)	

Now comes Bertha L., Washington, by and through counsel and court-appointed guardian, L. Mitchell, pursuant to Rule 56 (A) and hereby moves this Court for summary judgment against Defendant and to Dismiss Defendant's Motion to Dismiss. It is respectfully submitted that all material facts have been established by admission of the Defendant and/or by the binding rulings of the State of Ohio. State Decisions are binding into perpetuity against Defendant until compliance has been met. Accordingly, the Plaintiff is entitled to summary judgment as a matter of law. The reasons for this motion are more fully set forth in the attached Brief.

Respectfully submitted,

L. Mitchell (#0007205)
Attorney and Guardian for Bertha Washington
P.O. Box 08531
Cleveland, Ohio 44108
(216) 486-0024

Certificate of Service

A copy of the foregoing Plaintiff's Motion for Summary Judgment and Motion in Opposition to Defendant's Motion to Dismiss was hand-delivered to Dale A. Nowak, Attorney for Defendant, on this ___ day of April 2002.

L. Mitchell (0007205)

BRIEF IN SUPPORT

This suit seeks to recover expenses which the plaintiff is legally entitled to recover from Defendant by virtue of two State Hearings Decisions dated March 28, 2000 and June 21, 2000, and which is thereby owed by the Defendant in this case. The Defendant's regulatory governing authority for the funds at issue is the State of Ohio. This court has jurisdiction over the Ward, Bertha L. Washington, who is entitled to receive those funds at issue.

STATEMENT OF FACTS

The Ohio Administrative Code 5101:6-7-01 (herein after referred to as "OAC") provides in pertinent part:

(H) State hearing decisions **shall** (emphasis added) be binding on the agency or managed care plan for the individual case for which the decision was rendered.

The operative language of the OAC places compliance on the Defendant into perpetuity until FULL COMPLIANCE is met (see Plaintiff's EXHIBIT B). Pursuant to the OAC, the state hearing decision is binding on the agency. Since no timely appeal was

taken by the agency, monies demanded by Plaintiff are just, due and owing by Defendant. Plaintiff requests interest on said sums since March 28, 2000. Further, Defendant's acknowledged, and the State of Ohio continues to acknowledge, that said sums awarded to Plaintiff are just, due and owing. (See Plaintiff's Exhibits E and D, respectively).

The History:

Between 1993 and February 2000, Bertha L. Washington was enrolled as a member of Defendant's county and state supported program. There are also matching federal funds involved with these type of captive programs. The ward, a 93 year old indigent, was disenrolled from Defendant's program in February 2000 without Plaintiff's knowledge or permission, thereby causing irreparable harm to the Ward.

The underlying matter:

With the knowledge of the Probate Court of Cuyahoga County, a suit was commenced on February 15, 2002 against Defendant in the Cuyahoga County Common Pleas Court, Probate Division, before Judge John E. Corrigan in Case Number 2002 ADV 0059296. Prior to this, two state hearing decisions were entered against Defendant

for this matter on March 28, 2000 and June 21, 2000. (See Plaintiff's Exhibits A and B, respectively). As of February 15, 2002, absolutely no monies were forthcoming to the Ward, Bertha L. Washington, and no compliance with these two decisions had been met by the Defendant.

The Instant Suit:

This case for Declaratory Judgment is brought to enforce previously ordered mandates to reimburse the 93 year old indigent ward, Bertha L. Washington, for those expenses incurred between February 5, 2000 and March 28, 2000 (see Plaintiff's Exhibit C). Although Defendant's discovery in this case has been directed toward establishing the nature and extent of the court appointed guardian's knowledge about the finances of the ward, that issue is not appropriate for this litigation. The Defendant admits it owes the monies demanded by Plaintiff (see Plaintiff's Exhibits C and E). Defendant's regulatory agency for the State of Ohio has ordered Defendant to comply in at least three documented binding actions, with FULL mandatory compliance BINDING into perpetuity (see Plaintiff's Exhibits (A, B, D, E and F).

I. A STATE AGENCY IS BOUND BY A STATE HEARING DECISION UNTIL FULL COMPLIANCE IS MET.

The OAC 5101:6-7-01 (H) mandates that state hearing decisions shall be binding on the agency or managed care plan for the individual case for which the decision was rendered. In our instant suit, compliance was ordered and must be met. Since compliance has still not been met, although ordered, and binding on the Defendant, Plaintiff seeks to enforce those two binding decisions in this action.

II. THE TERMS OF THE REQUIREMENTS OF PLAINTIFF HAVE BEEN MET, AND THE DECISIONS OF THE UNDERLYING CASES ARE BINDING.

The terminology found in the decisions place absolutely no further burden on Plaintiff or Plaintiff's attorney to perform any affirmative actions. In fact, all duties owed are to Plaintiff are fully enforceable in their present state. Defendant has breached, intentionally and with the purpose of invoking delay, its compliance Order. (see Plaintiff's Exhibits A, B and F). The language of decisions rendered in favor of Plaintiff place no further burdens of compliance on Plaintiff. In fact, compliance has been place solely on Defendant and has not been met to date.

III. **DEFENDANT HAD KNOWLEDGE OF THE UNDERLYING SUIT AND IS BOUND BY THE STATE HEARING DECISIONS RENDERED THEREIN.**

Defendant has admitted it was on notice of the underlying suit (see Plaintiff's Exhibit E. Thus, Defendant, Western Reserve Area Agency on Aging, is bound by the determination of the State of Ohio.

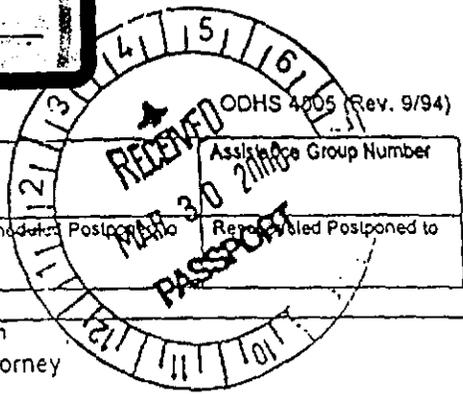
CONCLUSION

The language and the law of Ohio is clear. This lawsuit has become one of contract, with damages continuing until the Defendant complies. Accordingly, summary judgment should be granted in Plaintiff's favor in the sum of \$31,527.00 plus legal interest.

Respectfully submitted,

L. Mitchell (#0007205)
Attorney and Guardian for Bertha Washington
P.O. Box 08531
Cleveland, Ohio 44108
(216) 486-0024

COPY



STATE HEARING DECISION

County CUYAHOGA	District Hearings Section CLEVELAND	Assistance Group Name BERTHA WASHINGTON	Assistance Group Number
Place of Hearing CUYAHOGA CDHS	Initial Hearing Date 01/19/2000	Rescheduled/Postponed to 02/01/2000	Rescheduled/Postponed to Rescheduled/Postponed to
Appellant/Representative BERTHA WASHINGTON 10821 HAMPDEN AVE CLEVELAND, OH, 44108-		Appellant Representation Luann Mitchell, Attorney	Local Agency Representation Gerald Chatmon, Atty. Mary O'Neill, Passport Tracy Gordon, Reg. Nurse Marty McParland, Clin. Mgr.
Date Notice Mailed 12/30/1899	Date Received by Local Agency	Date Received by ODHS 12/29/1999	Date Appeal Summary Received
Date Scheduling Notice Mailed 01/21/2000			Appeal Number(s)/Program(s) 9932754/MED

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Human Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CLEVELAND District hearing section at 1-800-686-1551.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Human Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43266-0423 or FAX (614) 752-8298. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. (If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)

During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

ISSUE:

Appeal # 9932754:

The assistance group (AG) consists of a 92 year old individual in receipt of Medicaid benefits. The issue on appeal is whether the Passport agency correctly disenrolled appellant from Home and Community Based Services Waiver (HCBS). Notice proposing the disenrollment was issued 12/17/99. The hearing request was timely; benefits are not continuing.

The agency's 12/17/99 termination of Home & Community Based Services (HCBS) waiver is correct because the appellant has not resided in the community since 10/25/99. However, the agency is reminded that benefits are to remain intact when a state hearing request is timely.

PROCEDURAL MATTERS:

MCK

Appeal(s) OVERRULED 9932754	Date Issue 03/28/2000	Compliance
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Distribution: Original to appellant, one copy to local agency, one copy to district hearing section; one copy to district office; two copies to State Hearings. (Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)
ODHS 4005 (REV. 9/94)

Appeal Number(s) 9932754

The state hearing was requested 12/29/99 by the appellant's guardian and authorized representative (AR). The hearing was originally scheduled for 01/19/00 and rescheduled per the AR's request on 02/01/00. The Appeal Summary from Western Reserve Area on Aging was received 01/05/00 (Exhibit A).

SUMMARY OF PROCEEDINGS:

Agency:

The appellant has been enrolled in the PASSPORT program since 1994. The appellant was hospitalized at Mt. Sinai Health Center on 10/25/99. She was transferred to a short term rehabilitation center on 11/03/99. A discharge date had not been determined, but the plan was for appellant to return home. The need for reassessment was discussed with appellant's AR who was informed services would be put on hold until a reassessment could be completed. A letter was issued to the AR on 11/05/99 indicating PASSPORT's inability to provide services while the appellant was a resident in a nursing facility. The AR forwarded a letter dated 11/08/99 indicating acknowledgment and understanding of the standard procedure with regards to disenrollment procedure when enrollee has been institutionalized for an extended period of time.

A reassessment was completed at the nursing facility on 11/19/99. The discharge was expected to be approximately one week from the 11/19/99 date. A provider of choice was identified by the AR and a tentative care plan was discussed. As of 12/14/99 the appellant had not been discharged from the nursing facility and a definite discharge date had not been decided. A Notice of Disenrollment on the basis of indefinite institutionalization was completed and issued on 12/17/99. The request for a state hearing was received on 12/28/99. The agency is more than willing to enroll appellant in the PASSPORT HCBS Waiver program upon reassessment. They have agreed to issue the AR a licensed provider list and assist her in obtaining a home health care aide of her choosing.

When someone is institutionalized the normal practice is to keep the case open approximately 30 days from the time the client is admitted to the institution. The time of institutionalization has far exceeded 30 days. It is also the normal practice to alert the client and/or care giver of their right to apply at any time for the PASSPORT program. However, the appellant must have an assessment prior to enrollment in the PASSPORT program. The OAC indicates appellant must be residing in the community and not in a hospital or an institution. It is the policy of the PASSPORT Agency to disenroll an enrollee who is hospitalized or institutionalized between 30 and 60 days. The appellant has been residing in the rehabilitative therapy facility in excess of 100 days.

The appellant was disenrolled from the PASSPORT program 12/17/99. The reason for the disenrollment is institutionalization in a nursing facility pursuant to Rule 5101:3-31-03 (G) of the Ohio Administrative Code (OAC). The eligibility requirement for receiving PASSPORT HCBS Waiver services is the "the individual or enrollee must live in a residence which is not a Keys

Appeal Number(s)
9932754

Amendment facility as defined in rule 5101:3-31-02 of the administrative code; and must not reside in a hospital or nursing facility as defined in rule 5101:3-31-02 of the administrative code." A Notice of Disenrollment was mailed and a voice message left to notify the guardian of disenrollment. A Prior Notice of Disenrollment was not required because of the following circumstance; the individual was admitted to a skilled nursing facility (5101:6-2-05 - Exceptions to Prior Notice).

Appellant:

The dispute at the appeal was the disenrollment from PASSPORT HCBS Services Waiver on 12/17/99. The AR believes the hearing request was timely and the appellant should not have been disenrolled. The AR stated she was appointed as guardian in 3/99 because there was improper care of the appellant by the PASSPORT Agency. The appellant was not placed in a long term care facility but in a rehabilitative therapy center. There was never any provision for the appellant to remain in the long term care facility. The AR disputes the disenrollment based on institutionalization because appellant was in a rehabilitative therapy center. There is nothing in the OAC that delineates a time frame for disenrollment from the PASSPORT program. This is strictly the PASSPORT Agency's policy.

The AR agrees the appellant was initially hospitalized 10/25/99 and was discharged to the rehabilitative facility on 11/03/99. The appellant currently has a discharge date of 02/05/00 and will be discharged to her home. The AR agrees the appellant is not currently living in the community and has not since 10/25/99. An assessment was completed on 11/19/99, however, the home health care aide chosen by the AR from the PASSPORT provider list was unavailable. The AR indicated she had to search for another aide and was unable to have the appellant released from the facility. She is currently trying to obtain another qualified health care aide from the Provider list.

The AR agreed, during the appeal, an appointment for an assessment would be scheduled with the PASSPORT Agency prior to appellant's discharge from the rehabilitative therapy center.

FINDING OF FACT:

1.)- There is no dispute that:

- a.) Appellant was hospitalized on 10/25/99 and was discharged to a rehabilitative therapy center on 11/03/99.
- b.) As of the 02/01/00 hearing date, appellant is still residing in the rehabilitative therapy center and has not resided in the community since 10/25/99.
- c.) Appellant has a tentative discharge date of 02/05/00; a definitive discharge date has not been decided.
- d.) Notice of disenrollment was issued 12/17/99 and PASSPORT HCBS Waiver services were terminated effective 12/17/99.

Appeal Number(s) 9932754

2.) The state hearing request was timely. Appellant should not have been disenrolled from PASSPORT Services based on the timely hearing request.

POLICY:

1.) According to Ohio Administrative Code (OAC) Rule 5101:3-31-03, before an individual can be eligible for enrollment in the PASSPORT waiver program, all of the following criteria must be met:

- 1.) Medicaid financial and resource eligibility have been determined by the CDHS.
- 2.) The cost of the 12-month service plan does not exceed the cost cap.
- 3.) The needed services are not readily available through another source at the level required to allow the individual to live in the community.
- 4.) Health related needs can be safely met in a home setting as determined by the PASSPORT administrative agency.
- 5.) The attending physician must verbally approve the service plan prior to PASSPORT waiver enrollment and sign the service plan with thirty (30) days of the enrollment date.
- 6.) The individual must sign the "PASSPORT Home Care Service Plan."
- 7.) While receiving PASSPORT waiver services, the individual must live in a residence which is not an institution, foster home, or group living arrangement; and must not reside in a hospital or nursing facility (NF).
- 8.) The enrollee is age 60 or older at the time of enrollment, has an Intermediate or skilled level of care, and in the absence of the waiver would require NF services.
- 9.) The PASSPORT waiver program has not reached the Health Care Financing Administration (HCFA) -authorized limit of participants for the current year.
- 10.) The individual is not enrolled in a Medicare or Medicaid certified Hospice program.

(G) While receiving PASSPORT HCBS waiver services, the individual or enrollee must live in a residence which is not a Keys amendment facility as defined in rule 5101:3-31-02 of the Administrative Code; and must not reside in a hospital or NF as defined in rule 5101:3-31-02 of the Administrative Code.

2.) OAC Rule 5101:6-4-01 defines a timely hearing request:

(A) When a request for a state hearing is received by either the state or local agency within the prior notice period, benefits shall not be reduced, suspended or terminated until a state hearing decision is rendered.

(B) When benefits are reduced, suspended or terminated in violation of the provisions of paragraph (A) of this rule, benefits shall be reinstated to the previous level.

Appeal Number(s)

9932754

ANALYSIS:

As stated in the Medicaid waiver requirements, there is no eligibility for enrollment in PASSPORT unless all of the criteria listed in OAC Rule 5101:3-31-03 are met. One of the criteria to be met is the living arrangement, i.e., an individual must not reside in a hospital or nursing facility. The findings indicate appellant was hospitalized on 10/25/99 and entered a rehabilitative therapy center 11/03/99. As of the 02/01/00 state hearing appellant was still residing in the rehabilitative therapy center with no definitive date of discharge. The appellant has not resided in the community since 10/25/99. Therefore, the PASSPORT Agency's 12/17/99 termination of HCBS waiver services is correct. However, the Agency is reminded that when a state hearing request is timely, the benefits are not to be terminated until a state hearing decision is rendered.

HEARING OFFICER'S RECOMMENDATIONS:

Appeal # 9932754 - The appeal should be OVERRULED. The PASSPORT Agency's 12/17/99 termination of HCBS Waiver Services due to appellant's institutionalization is affirmed.

FINAL ADMINISTRATIVE DECISION AND ORDER:

The Hearing Officer's recommendations are adopted. Appeal #9932754 is OVERRULED.

EXHIBITS:

- Exhibit A: Appeal Summary (16)
- Exhibit B: Guardian's correspondence (3)



Ethan Chase, Hearing Authority

Date Issued: 03/28/2000

LUANN MITCHELL
P.O. BOX 08531
CLEVELAND, OH, 44108

MARY O'NEILL
PASSPORT 10A - WESTERN RESERVE
925 EUCLID AVE, SUITE 550
CLEVELAND, OH, 441151407



PASSPORT JUN 21 2000

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County CUYAHOGA	District Hearings Section CLEVELAND	Assistance Group Name BERTHA WASHINGTON		Assistance Group Number 5017512962
Place of Hearing CUYAHOGA CDHS	Initial Hearing Date 05/10/2000	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative BERTHA WASHINGTON LUANN MITCHAL, LGL.GDN. P.O. BOX 08531 CLEVELAND., OH, 44108-	Appellant Representation
	Local Agency Representation

Date Notice Mailed 12/30/1899	Date Received by Local Agency 04/06/2000	Date Received by ODHS 04/20/2000	Date Appeal Summary Received	Date Scheduling Notice Mailed 04/27/2000
Appeal Number(s)/Program(s) 9942556/MED				

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Human Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CLEVELAND District hearing section at 1-800-686-1551.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Human Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43266-0423 or FAX (614) 752-8298. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)*

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If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

ISSUES:

The Appellant was a recipient of Passport Services through Western Reserve Area Agency on Aging (WRAAA). WRAAA proposed disenrollment on 12/17/99 due to placement in a nursing facility. The guardian requested a hearing on 12/28/99. Passport inappropriately terminated services during the pendency of the appeal despite the guardian's timely request for hearing. A hearing decision was issued 3/28/00 overruling the appeal and finding that WRAAA's 12/17/99 termination of home and community-based waiver services due to Appellant's institutionalization was appropriate. That decision was affirmed by an administrative appeal decision issued 4/27/00. The guardian argues that the Agency should have reinstated benefits pursuant to the state hearing decision of 3/28/00 and that the Appellant should be reimbursed for her cost of care for that time frame. The second ground for appeal is based on WRAAA's refusal to accept re-enrollment forms from the guardian due to notations that the guardian had added to the forms. The guardian further argues that she was denied the right to reapply by WRAAA.

As noted in the 3/28/00 State Hearing Decision, the Agency improperly terminated benefits during the

MAA

Appeal(s) SUSTAINED 9942556	Date Issued 06/21/2000	Compliance 9942556
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Distribution: Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. (Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)
DHS 4005 (REV. 9/94)

Appeal Number(s) 9942556

course of the appeal. Those benefits should have been reinstated and the Appellant should be reimbursed for services she paid for during that period.

PROCEDURAL MATTERS:

The Guardian previously appealed the termination of Passport benefits. A state hearing was held 2/1/00. A hearing decision was issued 3/28/00, which overruled the appellant's appeal, but noted that the agency inappropriately terminated benefits while the appeal was pending. That decision was affirmed upon appeal on 4/27/00. The guardian requested another hearing on 4/6/00. A hearing was scheduled for 5/10/00, notice was sent on 4/27/00.

SUMMARY OF PROCEEDINGS:

The Appellant was a recipient of Passport Services through Western Reserve Area Agency on Aging (WRAAA). WRAAA proposed disenrollment on 12/17/99 due to placement in a nursing facility. The guardian requested a hearing on 12/28/99. Passport inappropriately terminated services during the pendency of the appeal despite the guardian's timely request for hearing. A hearing decision was issued 3/28/00 overruling the appeal and finding that WRAAA's 12/17/99 termination of home and community-based waiver services due to Appellant's institutionalization was appropriate. That decision was affirmed by an administrative appeal decision issued 4/27/00. The guardian argues that the Agency should have reinstated benefits pursuant to the state hearing decision of 3/28/00 and that the Appellant should be reimbursed for her cost of care for that time frame. The second ground for appeal is based on WRAAA's refusal to accept re-enrollment forms from the guardian due to notations that the guardian had added to the forms. The guardian further argues that she was denied the right to reapply by WRAAA.

WRAAA admitted that services were terminated improperly during the course of the appeal. As a result of the hearing WRAAA reopened the waiver case and had a new assessment completed on 2/8/00. WRAAA gave the guardian a waiver packet to review. On 3/22/00 WRAAA contacted the Guardian regarding the return of the waiver packet. The Guardian said she would fax the documents, but failed to do so until 3/30/00. When the packet was returned on 3/30/00, there were two notations made by the Guardian on the waiver forms to which WRAAA objected. First on the Responsibilities sheet, the Guardian had added "when possible" to the statement that the Appellant would be available to meet with her case manager on a regular basis. On the Authorization to Release Information the Guardian added a requirement that she be notified prior WRAAA contacting any third parties regarding the Appellant. The Guardian required that she be told the nature of the contact, the name, address and phone number of the person they intended to contact, the name of the agency or company and the nature of the information sought. WRAAA felt that the forms as altered were unacceptable, the reassessment was expired and since the hearing decision had been issued overruling the appeal, they closed out the case on 4/5/00. On 4/6/00 there was a conversation between the Guardian and WRAAA on the process for reapplication. The Guardian offered to refax a clean copy of the forms but was told it was unnecessary since a new application would be required.

The Guardian testified that she sent the material back to WRAAA through the mail, but they were not received. After being contacted by WRAAA she faxed the forms to them with the noted alterations.

Appeal Number(s) 8942556

The Guardian indicated that the alterations were not material alterations, but were made as a courtesy to the Agency. The Appellant is out of her home for most of the day, receiving therapy and would not be available regularly unless an appointment was scheduled. The Guardian also indicated that the doctor's office had told her that they would not release information to WRAAA without the Guardian's involvement which is why she added the notation to the release of information form. After the 4/6/00 telephone call with WRAAA, the Guardian faxed unaltered forms. These forms were returned to her. The Guardian indicated that she was told by another WRAAA employee that a new assessment would not be necessary. The final issue involves the attempt by the Guardian to reapply for waiver services on the Appellant's behalf. The Guardian states that when she contacted WRAAA on 4/18/00 she was denied the right to reapply because the intake worker indicated there was a notation on the computer not to take a new application. The WRAAA representative stated that the reason that no assessment was scheduled at the time of the guardian's call was because WRAAA wanted to have options to offer the Guardian to schedule a date and time. The WRAAA representative stated that telephone calls were made to schedule the assessment and that no contact was made. The Guardian indicated that her office was open during the times at issue and other business was transacted during those times.

FINDINGS OF FACT:

Undisputed Facts:

1. The Appellant was a recipient of Passport Services through Western Reserve Area Agency on Aging (WRAAA).
2. WRAAA proposed disenrollment on 12/17/99 due to placement in a nursing facility.
3. The guardian requested a hearing on 12/28/99. Passport inappropriately terminated services during the pendency of the appeal despite the guardian's timely request for hearing.
4. A hearing decision was issued 3/28/00 overruling the appeal and finding that WRAAA's 12/17/99 termination of home and community-based waiver services due to Appellant's institutionalization was appropriate. That decision was affirmed by an administrative appeal decision issued 4/27/00.
5. WRAAA admitted that services were terminated improperly during the course of the appeal.
6. As a result of the hearing WRAAA reopened the waiver case and had a new assessment completed on 2/8/00.
7. WRAAA gave the guardian a waiver packet to review. On 3/22/00 WRAAA contacted the Guardian regarding the return of the waiver packet. The Guardian said she would fax the documents, but failed to do so until 3/30/00.
8. When the packet was returned on 3/30/00, there were two notations made by the Guardian on the waiver forms to which WRAAA objected. First on the Responsibilities sheet, the Guardian had added "when possible" to the statement that the Appellant would be available to meet with her case manager on a regular basis. On the Authorization to Release Information the Guardian added a requirement that she be notified prior WRAAA contacting any third parties regarding the Appellant. The Guardian required that she be told the nature of the contact, the name, address and phone number of the person they intended to contact, the name of the agency or company and the nature of the information sought.
9. WRAAA felt that the forms as altered were unacceptable, the reassessment was expired and

Appeal Number(s) 9942556

since the hearing decision had been issued overruling the appeal, they closed out the case on 4/5/00.

10. On 4/6/00 there was a conversation between the Guardian and WRAAA on the process for reapplication. The Guardian offered to refax a clean copy of the forms but was told it was unnecessary since a new application would be required.

Disputed Facts:

1. The Guardian testified that she sent the material back to WRAAA through the mail, but they were not received.
2. The Guardian indicated that the alterations were not material alterations, but were made as a courtesy to the Agency. The Appellant is out of her home for most of the day, receiving therapy and would not be available regularly unless an appointment was scheduled. The Guardian also indicated that the doctor's office had told her that they would not release information to WRAAA without the Guardian's involvement which is why she added the notation to the release of information form.
3. The Guardian states that when she contacted WRAAA on 4/18/00 she was denied the right to reapply because the intake worker indicated there was a notation on the computer not to take a new application. The WRAAA representative stated that the reason that no assessment was scheduled at the time of the guardian's call was because WRAAA wanted to have options to offer the Guardian to schedule a date and time.
4. The WRAAA representative stated that telephone calls were made to schedule the assessment and that no contact was made. The Guardian indicated that her office was open during the times at issue and other business was transacted during those times.

CONCLUSIONS OF POLICY:

1. Ohio Admin. Code 5101:6-4-01 states that when a request for a hearing is received within the prior notice period benefits shall not be terminated until a hearing decision is rendered.
2. Ohio Admin. Code 5101:6-4-01 further states that when benefits are reduced, suspended or terminated in violation of the provisions of this rule, benefits shall be reinstated to the previous level.
3. Ohio Admin. Code 5101:6-4-01 requires the agency to respond to reinstatement orders by authorizing benefits within five workdays of receipt of the order.
4. "Reinstatement of benefits to the previous level" means that benefits shall be reinstated retroactive to the date the benefits were reduced, suspended or terminated.
5. Ohio Admin. Code 5101:3-31-04 provides that the application process for the PASSPORT HCBS waiver program begins with a completed application for Medicaid and contact with the passport administrative agency having passport program responsibility resulting in arrangement of an assessment.

ANALYSIS:

The Guardian requested that the hearing decision address Appellant's eligibility for services for the

Appeal Number(s)
9942556

period from her discharge from the nursing facility of 2/5/00 to the issuance of the hearing decision on 3/28/00 and for the period from 4/18/00 forward based on the claim that she was denied the opportunity to reapply for Passport.

Regarding the first period, the Appellant should have been covered for the period of the appeal and should have received services during that period. Ohio Admin. Code 5101:6-4-01 requires the agency to reinstate benefits to the previous level, retroactive to the date the benefits were reduced, suspended or terminated. WRAAA failed to do that and instead treated the case basically as a new application, requiring all new paperwork. The Appellant should be reimbursed for the care she paid for during this period.

The issue with regard to the 4/18/00 telephone contact between the Guardian and WRAAA is the subject of some dispute. However, WRAAA representatives indicated that the intake worker should create the screen for the assessment and then call back to schedule the actual assessment. It appears that the contact meets the requirements of Ohio Admin. Code 5101:3-31-04 of contact with the passport administrative resulting in arrangement of an assessment. The parties attempted to arrange the assessment at the hearing, but were unable to do so. The parties did agree to arrange the assessment at a mutually agreed time. While the intake worker was unable to arrange the assessment at the time of the call, the WRAAA did not refuse to take the Appellant's application.

HEARING OFFICER'S RECOMMENDATIONS:

Based upon the reasoning set forth above, I recommend that the Agency's decision be reversed and Appeal #9942556 be SUSTAINED.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Finding the hearing officer's decision to be supported by the evidence, the recommendation is adopted. Appeal #9942556 is SUSTAINED in part.

For the period from appellant's discharge of 2/5/00 from the nursing facility, to the issuance of the hearing decision on 3/28/00, The Appellant shall be reimbursed for the care she paid for during this period - **COMPLIANCE IS REQUIRED**

O.A.C. Section 5101: 6-7-03 requires prompt compliance with state hearing decisions. For decisions involving public assistance, compliance shall be achieved within 15 calendar days from the date the decision is issued, but in no event later than 90 calendar days from the date of the hearing request. Compliance shall be promptly reported to the Bureau of State Hearings, ODHS, via "State Hearing Compliance," ODHS 4068, accompanied by appropriate documentation.

For the period from 4/18/00 forward the actions of the WRAAA met the requirements of Ohio Admin. Code 5101:3-31-04 and the WRAAA did not refuse to take the Appellant's application.

APPENDIX:

- Exhibit A - 3/28/00 State Hearing Decision
- Exhibit B - 4/27/00 Administrative Appeal Decision
- Exhibit C - 4/6/00 Letter from WRAAA (2 pages)
- Exhibit D - 4/6/00 Letter from Guardian (3 pages)

PASSPORT

Ronald Hill, Executive Director

925 Euclid Ave., Suite 550, Cleveland, OH 44115

Phone (216) 621-0303 or 1-800-626-7277

FAX (216) 621-7174

July 3, 2000

Ms. Bertha Washington
C/O Ms. Luann Mitchell, Legal Guardian
P.O. Box 08531
Cleveland, Ohio 44108

Dear Ms. Mitchell:

We have received a copy of an Ohio Department of Human Services' State Hearing Decision issued on June 21, 2000. We assume that you are in receipt of this same document. On page five, it is ordered that Ms. Washington be reimbursed for care she paid for between the date of her discharge from the nursing facility on February 5, 2000 and the issuance of the first hearing decision on March 28, 2000. I am writing to describe how our agency can assist you in obtaining reimbursement for those services that PASSPORT would have paid for had Ms. Washington not been disenrolled from our program prior to the completion of the first hearing process.

Just to clarify, it is my understanding from the State Hearing Officer, Mr. Aristotel Papadimoulis, that Ms. Washington must seek reimbursement directly from the provider agencies who she paid for PASSPORT-like services rendered between February 5, 2000 and March 28, 2000. In turn, our agency can make the necessary arrangements to reimburse the provider agencies.

PASSPORT-like services would include the following:

- Adult day care
- Chore services
- Emergency response system
- Home delivered meals
- Homemaker/Custodial respite
- Home medical equipment and supplies (not covered by the traditional Medicaid program)
- Independent living assistance
- Minor home modifications
- Nutrition consultation

Board of Trustees: Eleanor Steigman/President, David Lubecky/Vice-President, Richard Hall/Treasurer, Joanne C. Kane, Secretary
Audrey Allard, John Blomstrom, Evelyn Bonder, Ellen E. Cantor, Zev Haral, R. Wendell Johnson, Jack Kiuchi, William T. Leahy, Elaine Rocker,
Richard T. Shearer, Clara Simmons, Frank T. Sossi, Rita Thomas, Samuel Waltz

This Agency is supported by Title III Older Americans Act Funds through the Ohio Department of Aging (ODA)

PLAINTIFF'S
EXHIBIT

E

- Personal care/Respite
- Social work and counseling
- Transportation (for medical appointments)

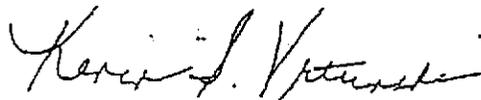
As mentioned above, I have been told by the Ohio Department of Human Services Hearing Officer that the provider agency reimburses Ms. Washington and, if they are certified as a PASSPORT provider, we will request PASSPORT funds from the Ohio Department of Aging to reimburse them. Please understand that we can not reimburse any providers who are not certified PASSPORT providers.

In order to assist you, we first need the names of those provider agencies to which Ms. Washington made payments from her personal funds for any of the above services between February 5, 2000 and March 28, 2000. In addition, we would greatly appreciate any information you may have regarding specific dates, type and amount of services. Once we have received this information from you, we will contact those agencies that are certified as PASSPORT providers to explain this process and help them determine which amounts should be reimbursed to Ms. Washington.

Please feel free to either mail or FAX the information we need to assist you in this matter, whichever you prefer. And please contact me at (216) 621-0303 extension 277 if you have any questions.

We hope that Ms. Washington is doing well at home. We recently learned that she has been enrolled in the PACE program at Concordia Care, a wonderful program that will surely add great value to her medical care and enhance her quality of life. We truly wish Ms. Washington the very best.

Sincerely,



Karen S. Vrtunski
Director of Community-Based Long Term Care

C: Martie McParland, Clinical Manager
- Joyce Gordon, Case Manager Supervisor
Mary O'Neill, Case Manager



(E) Notification

- (1) The individual and authorized representative shall be provided with the written state hearing decision via "State Hearing Decision," ODHS 4005. The decision shall provide notice of the right to and the method of obtaining an administrative appeal. ~~Copies~~ A COPY of the decision shall ALSO be sent to the local agency and to the bureau of state hearings, ODHS.
- (2) When the hearing involves one of the medical determination issues listed in paragraph (C)(2)(1) of rule 5101:6-6-01 of the Administrative Code, a copy of the decision shall also be sent to the medical determination unit.
- (3) When the hearing involves action or lack of action by a managed care plan, copies of the decision shall also be sent to the managed care plan and to the office of medicaid, ODHS.

(F) Hearing record

The state hearing decision, together with documents introduced at the hearing and all papers and requests filed in the proceeding, shall constitute the exclusive record. The hearing record shall be compiled and certified by the hearing authority and forwarded to the local agency, where it shall be maintained in accordance with applicable record retention requirements and made available for review by the individual and authorized representative.

(G) Library of decisions

The chief of the bureau of state hearings, ODHS, shall maintain a library of all state hearing decisions. The decisions shall be available for public inspection and copying, subject to applicable disclosure safeguards.

(H) Binding effect

State hearing decisions shall be binding on the agency or managed care plan for the individual case for which the decision was rendered.

Effective Date: _____

Review Date: _____

Certification: _____

Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Sections 2301.35, 5101.35
Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Prior Effective Dates: 7-1-76, 7-1-79, 6-1-80, 6-2-80, 9-19-80, 10-1-81, 5-1-82, 5-2-82, 10-1-82, 7-1-83, 11-1-83(Temp.), 1-1-84, 10-1-84(Emer.), 10-3-84(Emer.), 11-15-84(Emer.), 12-22-84; 2-1-85(Emer.), 2-4-85, 5-2-85, 7-30-85, 4-1-87, 10-14-88(Emer.), 12-22-88; 4-1-89, 11-1-89(Emer.), 1-29-90, 10-1-91, 6-1-93, 6-1-97, 10-1-97(Emer.), 12-30-97

EXHIBIT L

See Sept 19, 2002 letter
 from Virginia Ringel
 (Date sent her ltr on 1/22/02
 + she replied Sept 19, 2002)

IN THE COURT OF COMMON PLEAS
 PROBATE DIVISION
 CUYAHOGA COUNTY, OHIO

L. MITCHELL, GUARDIAN FOR,
 BERTHA L. WASHINGTON
 (AN INCOMPETENT),

Plaintiff,

vs.

WESTERN RESERVE AREA AGENCY
 ON AGING,

Defendant.

) CASE NO. 2002 ADV 0059296
)
) JUDGE JOHN E. CORRIGAN
) MAGISTRATE CHARLES T. BROWN

EVIDENCE OF DEFENDANT'S
 ATTORNEYS' FEES

SERVICES

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
02/26/02	Nowak	Discussion with Karen Vrtunski.	0.10	17.00
02/26/02	Nowak	Check Probate Court docket; instruction to docket clerk; telephone call, review Complaint, and exhibits.	0.40	68.00
03/01/02	Nowak	Discussion of new suit with Gerald Chattman.	0.10	17.00
03/01/02	Nowak	Letter to Client.	1.00	170.00
03/04/02	Nowak	Legal research; Motion to Dismiss.	1.30	221.00
03/05/02	Nowak	Instructions to paralegal.	0.10	17.00
03/06/02	Gregus	Conduct online case law research to obtain copies of [redacted].	0.30	28.50
03/07/02	Nowak	Call to Karen Vrtunski; return call.	0.10	17.00
03/11/02	Nowak	Research motion to dismiss.	1.00	170.00
03/11/02	Nowak	Further research.	0.80	136.00

**DEFENDANT'S
 EXHIBIT**
 RK
 2-11-05

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
03/11/02	Nowak	Motion to dismiss; further research; select exhibits and case law; telephone call to Karen Vrtunski; prohibition research re: res judicata.	3.50	595.00
03/12/02	Gregus	Perform online case law research to shepardize the cases of [redacted] and obtain copies of positive cases cited/mentioned. Preparation memo to Attorney Nowak regarding results of research.	0.50	47.50
03/13/02	Nowak	Motion to dismiss.	2.40	408.00
03/14/02	Nowak	Motion to dismiss.	2.00	340.00
03/15/02	Nowak	Meet with Gerald Chattman; research.	0.50	85.00
03/18/02	Nowak	Research; modify motion; exhibits.	3.50	595.00
03/19/02	Nowak	Call Karen Vrtunski.	0.10	17.00
03/19/02	Nowak	Prepare motions.	0.70	119.00
03/19/02	Nowak	Final changes to motion.	1.20	204.00
03/20/02	Nowak	Amend Notice of Deposition; Discussion with Karen Vrtunski.	0.20	34.00
03/21/02	Nowak	Revise affidavit.	0.20	34.00
03/21/02	Nowak	Prepare; discussion with Karen Vrtunski; meet Karen.	0.80	136.00
03/21/02	Nowak	Instruction to paralegal re: shepardizing, etc.	1.50	255.00
03/21/02	Nowak	Review fax; discussion with Karen Vrtunski; instruction to secretary.	0.40	68.00
03/21/02	Nowak	Review motion; draft affidavit.	0.70	119.00
03/21/02	Gregus	Conduct online research of cases cited in Defendant's Motion to Dismiss for [redacted]. Prepared Memo to Attorney Nowak regarding results of online research.	1.30	123.50
03/22/02	Nowak	Call courier; Discussion with Karen Vrtunski; Draft affidavit.	0.40	68.00

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
03/22/02	Nowak	Discussion of frivolous conduct motion with Ronald Wayne.	0.20	34.00
03/22/02	Nowak	Revise affidavit; Discussion with Karen Vrtunski; execution of affidavit; prepare.	0.70	119.00
03/26/02	Nowak	Discussion with Philly Insurance; instruction to secretary.	0.40	68.00
04/04/02	Nowak	Discuss depo with Karen Vrtunski.	0.10	17.00
04/04/02	Nowak	Instruction to secretary re: faxing notice of depo to LuAnn Mitchell.	0.10	17.00
04/04/02	Nowak	Prepare for LuAnn Mitchell deposition.	2.10	357.00
04/05/02	Nowak	Attempted depo of LuAnn Mitchell.	0.50	85.00
04/05/02	Nowak	Prepare Motion to Compel.	1.80	306.00
04/09/02	Nowak	Research; edit motion.	1.00	170.00
04/11/02	Nowak	Final changes.	0.20	34.00
04/12/02	Nowak	Instruction to docket re: hearing date.	0.20	34.00
04/12/02	Nowak	Investigate status.	0.20	34.00
04/12/02	Nowak	Prepare for motion hearing; notice; etc.	0.30	51.00
04/15/02	Nowak	Prepare for and attend hearing in Probate Court.	2.00	340.00
04/16/02	Wayne	Consult with Dale A. Nowak regarding guardianship issues.	0.30	67.50
04/16/02	Nowak	Discussion with Ron Wayne re: probate procedures and [redacted]; discussion with Karen Vrtunski; discussion with Larry Friedlander re: [redacted].	1.00	170.00
04/16/02	Nowak	Research [redacted] issue re: motion for protective order; prepare notice of depo.	1.50	255.00
04/16/02	Nowak	Discussion of strategy with Gerald Chatman.	0.30	51.00

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
04/17/02	Nowak	Prepare brief in opposition to motion for protective order.	0.50	85.00
04/17/02	Nowak	Prepare brief in opposition to motion.	0.50	85.00
04/18/02	Nowak	Edit brief; add research.	1.40	238.00
04/19/02	Nowak	Check probate docket via internet, etc.	0.20	34.00
04/22/02	Nowak	Attempt to check probate docket.	0.10	17.00
04/22/02	Nowak	Review outline for additional deposition questions; check probate docket for motion.	0.50	85.00
04/22/02	Nowak	Attend attempted depo.	0.20	34.00
04/22/02	Nowak	Prepare motion for sanctions; letter and new notice to LuAnn Mitchell; review file.	1.00	170.00
04/22/02	Nowak	Review motion to quash; legal research; modify brief in opposition.	2.50	425.00
04/22/02	Wilkins	Westlaw Research per Dale Nowak.	1.00	95.00
04/23/02	Nowak	Instructions to docket clerk/review info.	0.20	34.00
04/23/02	Nowak	Review correspondences from LuAnn Mitchell; final edits of brief and motion; discuss status with Karen Vrtunski.	1.30	221.00
04/23/02	Nowak	Edits to brief.	0.30	51.00
04/23/02	Nowak	Review pretrial notice; call to client.	0.20	34.00
04/29/02	Nowak	Prepare for and attend probate hearing; discussion with Karen Vrtunski.	2.00	340.00
04/29/02	Nowak	Review Civil rules; prepare motion to strike.	0.90	153.00
04/29/02	Nowak	Proof and edit motion to strike.	0.20	34.00
04/30/02	Nowak	Finalize Motion to Strike.	0.10	17.00
05/03/02	Nowak	Telephone call with docket courier.	0.10	17.00
05/03/02	Nowak	Preparation: check internet docket re; status discovery order.	0.10	17.00

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
05/06/02	Nowak	Prepare: docket check via internet.	0.10	17.00
05/08/02	Nowak	Check probate docket for discovery order.	0.10	17.00
05/09/02	Nowak	Preparation - check docket status.	0.10	17.00
05/13/02	Nowak	Review discovery order from Probate Court; facsimile to Karen; notify court reporter.	0.20	34.00
05/24/02	Nowak	Legal research and preparation - discuss with Gerald Chattman - motion to strike and impose sanctions.	1.30	221.00
05/28/02	Nowak	Telephone call to discuss status of litigation with Gerald Chattman.	0.10	17.00
05/28/02	Nowak	Telephone call to discuss status of litigation with Karen V.	0.10	17.00
05/28/02	Nowak	Prepare brief in opposition to motion in limine; Motion to show cause; Motion for monetary sanctions.	1.70	289.00
05/29/02	Nowak	Instructions to docket clerk; finalize motions.	1.00	170.00
05/30/02	Nowak	Review court docket via internet; prepare motion to reset hearing; modify brief.	0.60	102.00
05/30/02	Nowak	Finalize Motion to Strike, Motion for Sanctions and Motion to Compel.	0.20	34.00
05/30/02	Nowak	Instructions to secretary; prepare exhibits; instructions to docket clerk.	0.30	51.00
05/30/02	Nowak	Contact with Probate Court.	0.10	17.00
05/31/02	Nowak	Discuss status with Gerald Chattman and strategy.	0.20	34.00
06/03/02	Nowak	Telephone call with Karen V. regarding status.	0.10	17.00
06/05/02	Nowak	Call to Court; discuss status with Gerry Chattman; review docket.	0.30	51.00
06/06/02	Nowak	Prepare letter to magistrate regarding hearing schedule.	0.10	17.00

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
07/11/02	Nowak	Discussion regarding motion for fees, strategy with Douglas Paul and Gerald Chattman; review frivolous conduct statute; telephone call to Karen Vrtunski.	0.50	85.00
07/12/02	Nowak	Research cases and 2323.51; draft motion; add caselaw; review Court docket; instructions to docket clerk; edit motion; notice of depo.	5.40	918.00
07/15/02	Nowak	Final proofread and edits to motion; instructions to docket clerk.	0.50	85.00
07/16/02	Nowak	Instructions to secretary regarding exhibits and filing; discussion with Karen Vrtunski; on-line investigation.	0.40	68.00
07/17/02	Nowak	Prepare Amended Notice of Deposition and letter to Luann Mitchell; telephone call to court reporter; prepare letter to court reporter.	0.20	34.00
07/18/02	Nowak	Attention to letter to court reporter; instructions to docket clerk.	0.10	17.00
07/24/02	Nowak	Check court docket via internet; message for Karen Vrtunski.	0.20	34.00
07/25/02	Nowak	Investigate at Probate Court; review files; inventory department; voucher department; telephone call to court reporter; check Probate Dockets via internet; review; fax to Karen; check docket; review fax from Karen; discussion with Karen; prepare for deposition with new evidence.	5.60	952.00
07/26/02	Nowak	Meet with Karen Vrtunski to prepare for deposition; attempted deposition of Mitchell; contact with Probate Court; prepare letter to Mitchell, motion for sanctions and to compel discovery; investigate location of bank account; discussion with Huntington regarding subpoena; telephone call to Karen; edit motion; compute fees.	3.20	544.00

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
07/29/02	Nowak	Check Probate Docket via Internet; subpoena preparation for Huntington National Bank; instructions to secretary; instructions to docket clerk regarding transcript; prepare letter to Huntington Bank.	0.80	136.00
07/30/02	Nowak	Modify letter to Huntington; letter to Luann Mitchell; finalize motion; assemble exhibits; finalize letter to Mitchell, etc.	0.50	85.00
07/31/02	Nowak	Instructions to docket clerk.	0.10	17.00
08/01/02	Chattman	Review Washington Motion and conference Dale Nowak regarding same.	0.80	140.00
08/01/02	Nowak	Review transcript.	0.30	51.00
08/01/02	Nowak	Telephone Conference with Huntington Bank.	0.20	34.00
08/01/02	Nowak	Check probate docket status; discuss GBC.	0.10	17.00
08/09/02	Nowak	Letter to Mitchell re: notice of hearing.	0.10	17.00
08/09/02	Nowak	Preliminary review checks and bank statements	1.50	255.00
08/09/02	Nowak	Further review of cancelled checks.	0.30	51.00
08/12/02	Nowak	Attention to notice to Mitchell re: 9/26 hearing; instr. to secretary.	0.10	17.00
08/13/02	Nowak	Prepare motion to continue hearing upon post judgment motion for attorney's fees.	0.20	34.00
08/19/02	Nowak	Amend and edit motion to continue; review file.	0.20	34.00
08/19/02	Nowak	Review letter from Mitchell; letter to Mitchell; call Karen; call court reporter.	0.30	51.00
08/20/02	Nowak	Telephone conference with Huntington Bank; call Karen V.; call Megan re: motion.	0.40	68.00
08/20/02	Nowak	Motion for continuance/Judgment entry; call Karen; select exhibits; instr. to docket clerk.	0.50	85.00
08/20/02	Nowak	Call court reporter.	0.10	17.00

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
08/21/02	Nowak	Appear at Probate Court to confirm court action upon motion for continuance; wait briefly for notice of ruling; call court reporter; instructions regarding exhibits; discussion with Karen regarding Ringle letter; further review bank records; analysis; prepare for hearing.	4.20	714.00
08/22/02	Nowak	Instructions to copy service; exhibit preparation; organize and prepare for hearing; attend probate hearing; travel.	5.80	986.00
08/23/02	Nowak	Prepare brief in opposition to motion for attorney's fees; prepare exhibit; organize and unpack materials from hearing.	1.70	289.00
08/26/02	Nowak	Telephone conversation with court reporter regarding transcript.	0.10	17.00
08/27/02	Nowak	Review Karen Vrtunski's fax; attention to motion for continuance; instructions to secretary; proofread and edit brief in opposition to Plaintiff's motion for attorney's fees; instructions to docket clerk.	0.40	68.00
08/29/02	Nowak	Review order; consider appeal options; call Karen Vrtunski; call Gerald Chatman.	0.40	68.00
08/30/02	Nowak	Outline research assignment; letter to Mitchell regarding notice of filing of deposition.	0.50	85.00
08/30/02	Craig	Discuss case background and receive research assignment from Attorney Nowak.	0.40	58.00
09/03/02	Nowak	Discuss research assignment [redacted] with Mark Craig.	0.20	34.00
09/03/02	Craig	Research [redacted].	3.30	478.50
09/04/02	Nowak	Message from court reporter; call Kelly Linkowski.	0.20	34.00
09/05/02	Nowak	Telephone conversation with Karen Vrtunski.	0.20	34.00
09/09/02	Nowak	Attention to [redacted] issues.	0.10	17.00
09/11/02	Nowak	Instructions to secretary regarding transmittal/notice/etc.	0.10	17.00

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
09/19/02	Nowak	Review letter; discussion with Karen Vrtunski, Gerald Chattman.	0.20	34.00
09/20/02	Chattman	Conference D. Nowak - (Washington Litigation).	0.50	87.50
09/20/02	Nowak	Telephone discussion regarding strategy with Karen Vrtunski; discussion with Gerald Chattman regarding Ringel issues, etc.; prepare motion for clarification.	1.20	204.00
09/23/02	Nowak	Carefully review transcript; edit motion for clarification; review Mitchell correspondence; correspondence to Virginia Ringel.	2.80	476.00
09/24/02	Nowak	Call court reporter regarding 9-26-02 hearing; edit letter; research subpoena power; select enclosures; call [redacted]; mark exhibit.	1.20	204.00
09/24/02	Nowak	Call court reporter re: 9/26 hearing.	0.10	17.00
09/25/02	Nowak	Review correspondence from Probate Court; contact with Probate Court re: hearing notice; telephone Karen Vrtunski; discussion with Gerald Chattman preparation.	1.20	204.00
09/26/02	Nowak	Prepare for hearing.	1.70	289.00
09/26/02	Nowak	Attend Probate Court hearings	2.10	357.00
09/26/02	Chattman	Review letter to [redacted] and Conference D. Nowak regarding Same.	1.00	175.00
09/27/02	Nowak	Telephone discussion with Court Reporter re: spellings of names; Mitchell's address, phone number, etc.	.20	34.00
09/30/02	Nowak	Review transcript; instruction to copy service; instruction to secretary re: docket clerk.	.20	34.00
10/14/02	Nowak	Check Probate docket for ruling.	0.10	17.00
10/23/02	Nowak	Check status of court docket for ruling via internet.	0.10	17.00
10/23/02	Nowak	Review Motion for Summary Judgment of Dr. Cook.	0.10	17.00
10/25/02	Nowak	Research [redacted].	1.00	170.00

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
10/25/02	Nowak	Discussion with GBC; modify letter to [redacted].	0.80	136.00
11/08/02	Nowak	Check Probate docket for ruling on-line.	0.10	17.00
11/15/02	Nowak	Review letter from [redacted]; response.	0.20	34.00
01/06/03	Nowak	Review magistrate's order; e-mail Mary; letter to Karen Vrtunski.	0.20	35.00
01/14/03	Nowak	Call Karen re: deposition; instructions to Mary.	0.10	17.50
01/14/03	Nowak	Attention to deposition notice.	0.10	17.50
01/14/03	Nowak	Review status; instructions to secretary; contact with Probate Court; check civil rules.	0.40	70.00
01/14/03	Nowak	Check internet docket re: prior discovery ruling; draft motion to strike; instructions to secretary.	0.60	105.00
01/15/03	Nowak	Instructions to docket clerk; edit motion; instructions to secretary.	0.30	52.50
01/15/03	Nowak	Proofread motion; locate exhibits for motion to strike; instructions to secretary.	0.30	52.50
01/31/03	Chattman	Conference D. Nowak - Bertha Washington Case.	0.20	36.00
02/06/03	Nowak	Review amended probate order.	0.10	17.50
02/26/03	Nowak	Schedule court reporter for hearing.	0.10	17.50
03/04/03	Nowak	Discuss upcoming hearing/possible settlement with Karen Vrtunski.	0.20	35.00
03/05/03	Nowak	Prepare for hearing.	0.90	157.50
03/05/03	Nowak	Attend probate hearing; update GBC on status.	2.70	472.50
03/07/03	Nowak	Discuss audio/video options capability and deposition date with court reporter; call Karen Vrtunski re: deposition date.	0.20	35.00
03/10/03	Nowak	Review letter of [redacted].	0.10	17.50
03/10/03	Nowak	Review ruling; letter to Karen Vrtunski.	0.10	17.50

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
03/11/03	Nowak	Discussion with Karen re: deposition exhibits.	0.20	35.00
03/12/03	Nowak	Prepare notice of deposition.	0.20	35.00
03/13/03	Nowak	Review new fax from Karen Vrtunski; copy deposition exhibits; discussion with Karen Vrtunski.	0.40	70.00
03/24/03	Nowak	Prepare for deposition.	3.20	560.00
03/24/03	Nowak	Depo preparation.	0.70	122.50
03/25/03	Nowak	Prepare further exhibits; attend deposition of Luann Mitchell; travel.	3.50	612.50
03/26/03	Chattman	Conference D. Nowak - litigation update.	0.50	90.00
03/26/03	Nowak	Update GBC re: status.	0.20	35.00
03/26/03	Nowak	Call Attorney Charles Patton.	0.10	17.50
03/26/03	Nowak	Discussion with court reporter Laura Ware.	0.20	35.00
03/26/03	Nowak	Letter to Attorney Patton.	0.20	35.00
03/26/03	Nowak	Organize file post depo.	0.40	70.00
03/27/03	Nowak	Review transcript; discussion with Laura Ware; letter to Judge Corrigan.	1.00	175.00
03/31/03	Nowak	Discussion with Laura Ware; discussion with Karen Vrtunski; fax to Karen Vrtunski.	0.20	35.00
04/01/03	Nowak	Review fax; call Karen Vrtunski re: state hearing.	0.10	17.50
04/01/03	Nowak	Discussion with Charles Patton; fax to Mr. Patton.	0.40	70.00
04/02/03	Nowak	Discuss status of possible settlement proposal with Karen Vrtunski.	0.20	35.00
04/10/03	Nowak	Prepare Motion to Show Cause.	0.20	35.00
04/10/03	Nowak	Edit Motion to Show Cause.	0.10	17.50
04/10/03	Nowak	Instruction to secretary re: service, filing, etc.; final proofread of motion.	0.10	17.50

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
04/11/03	Nowak	Check status of docket.	0.10	17.50
04/16/03	Nowak	Check Probate docket on line; call Laura Ware, contact with Probate Court; call Karen.	0.20	35.00
04/17/03	Nowak	Contact with Probate Court for hearing date; letter to Charles Patton.	0.20	35.00
05/07/03	Wayne	Telephone call Dale Nowak [redacted].	0.10	22.50
05/07/03	Nowak	Prepare time summary for show cause hearing.	0.20	35.00
05/07/03	Nowak	Prepare for hearing; discuss with Ron Wayne.	0.50	87.50
05/07/03	Nowak	Attend Probate contempt hearing.	1.80	315.00
05/12/03	Chattman	Review Court Order on Washington; conference Dale Nowak.	0.20	36.00
05/12/03	Nowak	Review Order; discussion with GBC; call court reporter for removal hearing.	0.20	35.00
05/21/03	Chattman	Conference D. Nowak regarding court hearing.	0.70	126.00
05/21/03	Nowak	Prepare for and attend probate hearing; meeting with Gerald B. Chattman post hearing.	2.80	490.00
05/21/03	Nowak	E-mail Joel Mirman; discussion with court reporter Kelly.	0.30	52.50
05/22/03	Chattman	Conference D. Nowak - file review and preparation for [redacted].	1.00	180.00
05/22/03	Nowak	Review e-mail response from Joel Mirman.	0.20	35.00
05/23/03	Chattman	Review [redacted] and response to same.	0.30	54.00
05/23/03	Nowak	Prepare, review and revise post-hearing brief.	3.90	682.50
06/02/03	Nowak	Review transcript; instructions to secretary.	0.60	105.00
06/17/03	Nowak	Discussion with GBC; check on-line docket.	0.20	35.00
06/17/03	Nowak	Prepare Motion to Strike.	0.20	35.00
06/17/03	Nowak	Travel to Probate Court; review brief filed by Mitchell and exhibits.	1.10	192.50

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
06/17/03	Nowak	Discussion with GBC; prepare Motion to Show Cause; review docket further.	1.00	175.00
06/19/03	Nowak	Check docket on-line; discuss status with Karen Vrtunski.	0.20	35.00
06/24/03	Nowak	Review document from Luann Mitchell; draft motion to strike; contact with Probate Court.	0.40	70.00
07/02/03	Nowak	Check status of docket on-line; call Karen Vrtunski; call court reporter.	0.30	52.50
07/07/03	Nowak	Attention to deposition notice.	0.20	35.00
07/30/03	Nowak	Gather documents for deposition preparation; review; exhibits; discussion with secretary; contact with Probate Court; call Attorney Charles Patton; letter to Attorney Charles Patton; instruction to secretary; call for Karen Vrtunski; advise GBC.	1.90	332.50
07/31/03	Nowak	Call Marty M.; discussion with GBC; attempt to reach Karen Vrtunski; attempt to meet Karen Vrtunski.	0.50	87.50
08/06/03	Nowak	Call Lyndhurst Municipal Court; discussion with Richmond Heights Prosecutor; call [redacted].	0.60	105.00
08/06/03	Nowak	Contact with Probate Court; call Attorney Patton's office and pager.	0.20	35.00
08/06/03	Nowak	Discussion with Bailiff re: transcript; call court reporter.	0.30	52.50
08/07/03	Nowak	Discuss transcription of partial Lyndhurst proceeding with court reporter.	0.10	17.50
08/07/03	Nowak	Discussion with Charles Patton; contact with Probate Court.	0.10	17.50
08/07/03	Nowak	Discussion with Charles Patton re: new schedule.	0.10	17.50
08/08/03	Nowak	Discussion with Laura Ware re: Lyndhurst Transcript.	0.10	17.50
08/13/03	Nowak	Discussion with [redacted] re: other cases of Mitchell.	0.50	87.50

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
08/20/03	Nowak	Call Patton's office; stop at Probate Court to set new dates; call Patton's office; call Karen Vrtunski.	0.30	52.50
08/21/03	Nowak	Letter to Attorney Patton re: new dates.	0.10	17.50
08/22/03	Nowak	Discussion with [redacted] re: Mitchell's attempt to charge her for the same computer.	0.50	87.50
08/29/03	Nowak	Letter to Judge Corrigan; call court reporter.	0.10	17.50
09/03/03	Nowak	Prepare and attend deposition at Probate Court; review Municipal Court transcript; discussion with Karen; discuss settlement issues with Court.	11.10	1,942.50
09/05/03	Nowak	Update GBC re: status; call Karen Vrtunski.	0.30	52.50
09/09/03	Nowak	Review recent decision re: 2323.51.	0.30	52.50
09/11/03	Nowak	Discussion with [redacted].	0.20	35.00
09/16/03	Nowak	Call Attorney Patton re: documents.	0.10	17.50
09/17/03	Nowak	E-mail exchange with court reporter; locate exhibit; instruction to secretary.	0.10	17.50
09/17/03	Nowak	Letter to Attorney Patton; reduce Patton phone message to writing; call FAMICOS.	0.60	105.00
09/18/03	Nowak	Discussion with Charles Patton.	0.10	17.50
09/18/03	Nowak	Call from Sharon; discussion with Court [redacted].	0.80	140.00
09/19/03	Nowak	Proof and edit motion.	0.30	52.50
09/22/03	Nowak	Attention to transcript and exhibits filing.	0.10	17.50
09/24/03	Nowak	Duces tecum; discussion with Mary re: subpoenas.	0.50	87.50
9/24/03	Nowak	Edit notices of deposition; call court reporter.	0.60	105.00
9/25/03	Nowak	Return call to Attorney Weiss; call Laura Ware.	0.10	17.50
9/25/03	Nowak	Discussion with Joe Weiss; discussion with Claude Banks.	0.20	35.00

<u>DATE</u>	<u>ATTORNEY</u>	<u>SERVICES</u>	<u>HOURS</u>	<u>VALUE</u>
09/25/03	Nowak	Discussion with Joe Weiss.	0.10	17.50
09/26/03	Nowak	Update GBC.	0.20	35.00
09/29/03	Nowak	Discussion with Mary; call Justina, etc.	0.20	35.00
09/30/03	Nowak	Call Sharon Leggett; call court reporter; discuss deposition with Claude Banks; discuss subpoena and records with Teresa Erelenbach; discussion with Probate Court; instruction to Mary; discussion with Justina; discussion with John A. at Famicos; project instructions to Jan Male.	2.00	350.00
09/30/03	Nowak	Discuss strategy and status with GBC; update Karen Vrtunski on new developments.	0.40	70.00
10/01/03.	Male	Preparing Attorney Fee summary.	6.50	617.50

SUBTOTAL PRIOR TO DISMISSAL: \$11,212.50

SUBTOTAL POST - JUDGMENT MOTION: \$20,375.50

GRAND TOTAL: \$31,588.00

SUMMARY

ATTORNEY	HOURS	RATE	AMOUNT
Gregus, Robyn	2.10	95.00	199.50
Wayne, Ronald F.	.40	225.00	90.00
Nowak, Dale A.	112.20	170.00	19,074.00
Wilkins, Amy L.	2.30	95.00	218.50
Paul, Douglas J.	.30	250.00	75.00
Chattman, Gerald B.	2.30	175.00	402.50
Craig, Mark F.	3.70	145.00	536.50
Chattman, Gerald B.	2.90	180.00 (increase 2003)	522.00
Nowak, Dale A.	56.30	175.00 (increase 2003)	9,852.50
Male, Janice R.	6.50	95.00	617.50

EXPENSES

Research	\$ 199.82
Deposition Attendance and Transcripts	3638.35
Parking	60.00
FedEx	145.87
Filing Fee	8.75
Copies	4.00
Witness Fees	48.00
TOTAL EXPENSES:	<u>\$4104.79</u>

Respectfully submitted,

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP

By: _____


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Agency on Aging*

CERTIFICATE OF SERVICE

A copy of the foregoing Evidence of Defendant's Attorneys' Fees was served by regular U. S. Mail, postage prepaid, this 6th day of October, 2003, upon the following:

LuAnn Mitchell, *pro se*
P.O. Box 08531
Cleveland, OH 44108
*Court Appointed Guardian for
Bertha L. Washington*

Dale A. Nowak, Esq. (#0014763)

EXHIBIT M

1 APPEARANCES:

2 Luann Mitchell, Esq.
3 P.O. Box 08531
4 Cleveland, OH 44108
5 216.486.0824

6 On behalf of the Plaintiff
7 Pro Se.

8 Dale A. Nowak, Esq.
9 Buckingham, Doolittle & Burroughs
10 1700 One Cleveland Center
11 1375 East Ninth Street
12 Cleveland, OH 44114
13 216.621.5300

14 On behalf of the Defendant.
15
16
17
18
19
20
21
22
23
24
25

Rule 53

1 THE COURT: It looks like we have
2 seven motions, and first is a motion to quash.
3 This is June 8th -- wait a minute. June 8th, May
4 20th, April -- we'll start in the back. April
5 19th, objection of Western Reserve to Magistrate's
6 report. Well, I don't want to hear those right
7 now. I want to go through these motions.
8 Defendant's motion to strike objection to
9 Magistrate's report and brief in opposition to --
10 and we've got a motion to quash. Which one should
11 I hear first?

12 MR. NOWAK: Whichever you prefer, Your
13 Honor.

14 THE COURT: Well, then let's go
15 with --

16 MS. MITCHELL: I have a comment.

17 THE COURT: Yes.

18 MS. MITCHELL: Judge, you just said
19 motion to quash. I don't have a motion to quash.

20 THE COURT: This was filed on May the
21 20th -- no, June the 8th. A motion to quash,
22 defendant Western Reserve Agency. You don't have
23 that?

24 MS. MITCHELL: No. The only thing I
25 have from Mr. Nowak is one that was filed -- I'm

1 sorry, yes, I do have it. Yes, I have it.

2 THE COURT: You have that?

3 MS. MITCHELL: Yes, motion to quash,
4 yes, I have it.

5 THE COURT: Motion to quash of
6 defendant Western Reserve Area Agency on Aging?

7 MS. MITCHELL: Yes, I have that.

8 THE COURT: It's not the best English
9 that I've ever read, but I guess it means defendant
10 wishes to quash your motion to object to the
11 Magistrate's decision?

12 MR. NOWAK: Your Honor, if I may.

13 MS. MITCHELL: It's to a subpoena that
14 I served upon his client who's not present in the
15 courtroom today.

16 THE COURT: Well, you can imagine that
17 the Court -- how confused we are here at the
18 Probate Court with this case. It just seems it's
19 never going to end. There's so many motions.
20 Which motion should I hear first?

21 MS. MITCHELL: Judge, I'll explain.
22 On Saturday, the 11th, I also --

23 THE COURT: You'll also get a chance,
24 but you passed, so now she can explain.

25 MS. MITCHELL: The motion to quash of

1 defendant Western Reserve Area Agency on Aging --

2 THE COURT: Yeah.

3 MS. MITCHELL: -- it looks like it was
4 served on, or allegedly served on, the 8th of June.
5 What that is is that I filed a subpoena from this
6 court. It was originally directed to Virginia
7 Ringle, who is the chief of the Bureau of State
8 Hearings, and when I did not get a response to that
9 I then issued a second one to Virginia Ringle, and
10 also subpoenas to Karen Vrtunski, who is the
11 director of long-term planning and the client of
12 Mr. Nowak.

13 You'll notice today for the first time
14 now that she's under a subpoena we don't see her
15 sitting in the courtroom, but she's the client of
16 Mr. Nowak who always has been sitting with
17 Mr. Nowak over the years, plural, that this case
18 has been pending.

19 I also sent the same subpoena to
20 Ronald Hill, who is the executive director of
21 Western Reserve Area Agency on Aging, asking all
22 three parties to produce to me a copy of
23 Mr. Nowak's January 22nd, 2002 letter, which is
24 where, as far as I could trace back, Mr. Nowak
25 requested the Bureau of State Hearings to reopen

1 the fact that Mrs. Washington had twice been
2 awarded two decisions favorable to her and adverse
3 to Western Reserve, which were the decisions we
4 talked about repeatedly over the years. That one
5 was dated the 21st of June, 2000 and March 28th of
6 2000. And those were the two decisions that
7 ordered Western Reserve to pay to Mrs. Washington
8 the reimbursable expenses that I had submitted to
9 them during the hearings that I had before the
10 Bureau of State Hearings.

11 As you perhaps will or may not recall
12 the March 28th letter, excuse me, decisions of 2000
13 ordered payment and when payment was not
14 forthcoming I filed again before the Bureau of
15 State Hearings and that was heard --

16 MR. NOWAK: Objection, Your Honor.
17 This is far afield.

18 MS. MITCHELL: I'm explaining to you
19 what the subpoenas are for. May I continue,
20 please?

21 THE COURT: Go ahead.

22 MS. MITCHELL: Thank you. I then went
23 back to the Bureau on June 21st of 2000 letting
24 them know with a second hearing that Mr. Nowak's
25 client, Western Reserve Area Agency on Aging, had

1 still not complied with the order issued on them
2 March 28th of 2000 to reimburse Mrs. Washington.

3 What I then did subsequently was, and
4 has been introduced as evidence, is a September 19
5 letter dated 2002 from Mr. -- it was addressed to
6 Mr. Nowak and it references a January 22nd letter.
7 I'm sorry, 2002, September. It references a letter
8 that Mr. Nowak sent to Virginia Ringle, the chief
9 of the Bureau of State Hearings, on January 22nd of
10 2002, and she indicates in her September 19 letter
11 that she is responding to him and that they cannot,
12 from the Bureau's standpoint, reopen the issue,
13 that once it's been decided it's binding on the
14 agency pursuant to the Ohio Administrative Code,
15 and I wanted a copy of that January 22nd, 2002
16 letter because it keeps coming up being referenced.

17 So I issued subpoenas to Virginia
18 Ringle because she was the one that received
19 Mr. Nowak's letter January 22nd of 2002. When I
20 didn't get it, it was not forthcoming, that's when
21 I then issued the same subpoenas to his client,
22 who's absent today, Karen Vrtunski, and to Ronald
23 Hill who is the executive director. In response to
24 me issuing that subpoena Mr. Nowak then filed the
25 motion to quash, so he is asking this Court to

1 quash my subpoenas to get the letter dated January
2 22nd of 2002.

3 MR. NOWAK: May I be heard, Your
4 Honor?

5 First of all, Your Honor, I don't know
6 anything about a subpoena that she may have
7 directed to Ms. Ringle recently because I never
8 received a copy of it, so I would object to any
9 subpoena that I didn't receive a copy of. Number
10 two, she issued subpoenas to Western Reserve Area
11 Agency on Aging, to my client, and served them upon
12 Ron Hill and Karen Vrtunski without sending me a
13 copy of them. I learned directly about them from
14 my client.

15 As set forth in our motion to quash,
16 Ms. Mitchell can't use a subpoena to obtain
17 discovery from a party. She sought production of a
18 letter on June 9th. She didn't subpoena anybody to
19 any hearing today, based on any subpoena I ever
20 saw, and it's, as outlined in my motion, it's
21 improper for her to try to use Civil Rule 45. It
22 should be Rule 34. Rule 34(C) makes that clear.
23 And so she shouldn't have used the subpoena, she
24 should have used a Rule 34 request. She waived the
25 opportunity to do discovery because she didn't try

1 any of this discovery that she's now seeking before
2 Magistrate's Brown's hearing was held, and besides
3 which I gave her the piece of paper she wants
4 because it only helps support our motion for fees
5 and I attached the document she seeks to my motion
6 to quash.

7 THE COURT: All right. Did you get
8 that?

9 MS. MITCHELL: May I respond? Yes,
10 Judge, certainly it's proper for me to issue the
11 subpoena and the subpoena should have gone to
12 Ms. Vrtunski, to Mr. Hill and to Virginia Ringle.

13 THE COURT: How about to counsel?

14 MS. MITCHELL: He gets only a copy,
15 but the subpoena actually went to the actual
16 people, they were served.

17 THE COURT: Did you send him a copy?

18 MS. MITCHELL: Yes, we mailed him a
19 copy as well. The other thing is Mr. Nowak says,
20 right now, he says that -- and that's not even the
21 basis of his motion, Judge, if you'll read it. The
22 basis of Mr. Nowak's motion to quash is that I
23 could not serve a subpoena because I am a named
24 party and that therefore the subpoena was
25 improperly served.

1 MR. NOWAK: Your Honor, that's not my
2 argument at all. She ought to read the motion.

3 MS. MITCHELL: Well, no, because I'm
4 going to open it up, Mr. Nowak.

5 MR. NOWAK: Your Honor, a moment ago
6 she didn't know she had it. Can we take a recess
7 so she can read it?

8 MS. MITCHELL: No, I don't need to
9 read it, Judge.

10 THE COURT: Well, is this the letter
11 that you were seeking by subpoena that I have a
12 copy of?

13 MS. MITCHELL: Here's my -- yes.

14 THE COURT: You have the letter?

15 MS. MITCHELL: It's attached to what
16 Mr. Nowak filed on the --

17 THE COURT: So that's what you wanted,
18 isn't it?

19 MS. MITCHELL: Well, yes it is, but
20 certainly my discomfort level is that it came from
21 him and not from his client who's under a subpoena.

22 THE COURT: Okay.

23 MS. MITCHELL: But I wanted to share
24 with you also that Mr. Nowak indicates that under
25 Rule 45 I could not issue the subpoena, but I

1 disagree with him. I wanted to share with you that
2 I have a copy of Mr. Nowak's subpoena that was
3 issued to me in the hearing before Magistrate
4 Brown, and though he lists me as Luann Mitchell
5 guardian, he actually served that upon me and I was
6 a party in that case.

7 So what he's arguing here now is the
8 same thing, is that I'm a party and so I could not
9 issue the subpoena, but he's already done this and
10 the subpoena has been issued to me.

11 THE COURT: But you got what you asked
12 for.

13 MS. MITCHELL: Well, yes.

14 THE COURT: So this is moot, is it
15 not?

16 MS. MITCHELL: If we assume that it's
17 valid, yes, it would be, sir.

18 MR. NOWAK: Your Honor, I'd like to
19 note for the record that she just told you that she
20 received a trial subpoena for the Magistrate Brown
21 hearing, but she earlier in testimony -- if she had
22 given you a complete transcript you would see she
23 denied receipt of that subpoena.

24 I'd like the record to show that she's
25 now lied to the Court again.

1 THE COURT: Okay. Well, I'm going to
2 just mark this one as moot then, this motion to
3 quash moot.

4 MS. MITCHELL: Your Honor, for the
5 record we got copies from your file.

6 THE COURT: Okay.

7 MS. MITCHELL: Thank you.

8 THE COURT: Defendant's motion to --
9 what's the next one? 4-20, what was filed on 4-20?

10 MR. NOWAK: I filed on April 19th,
11 Your Honor --

12 THE COURT: April 19th, objection
13 to --

14 MR. NOWAK: Western Reserve's
15 objection.

16 THE COURT: Okay. There was a motion
17 on 4-20 where Ms. Mitchell asked for an extension
18 of time and that was granted to 5-11, so that's
19 taken care of. And she then did file an objection
20 to Magistrate Brown's report on 5-11, so that's
21 pending. We're about to hear --

22 MR. NOWAK: I have 5-10, Your Honor,
23 for her objection.

24 THE COURT: 5-10, okay. She had until
25 5-11, so that's timely. I guess the next thing

1 that I should hear then is Mr. Nowak's motion to
2 strike the objection to the Magistrate's report.

3 ~~(X)~~ Your objection to the Magistrate's
4 report filed on the 19th was regarding your hourly
5 rate, I believe?

6 MR. NOWAK: Yes, Your Honor.

7 THE COURT: The Magistrate awarded you
8 \$100 an hour, you requested \$170 an hour. Why
9 don't we go to that one first. That seems to be
10 the easiest one.

11 MR. NOWAK: Your Honor, trusting that
12 the Court has read my objection --

13 THE COURT: Yeah.

14 MR. NOWAK: -- I don't feel it's
15 necessary to repeat it. From Western Reserve's
16 standpoint, \$100 is too low an award of reasonable
17 attorney's fees in a case where the attorney on the
18 other side doesn't follow the rules and lies to the
19 Court.

20 THE COURT: Okay. I agree. I'm
21 awarding you \$170 an hour.

22 MR. NOWAK: Thank you, Your Honor.

23 THE COURT: So you win on that one.

24 MS. MITCHELL: May I speak?

25 THE COURT: On which one, on this, his

1 fees?

2 MS. MITCHELL: You said there's a
3 motion to strike objection to the Magistrate's
4 report, so that's his objections for the fee.

5 THE COURT: On the May 20th? The May
6 20th one, no, I'm not on that one. I'm talking
7 about the April 19th one. That was his objection
8 to the Magistrate's report on his fees, and I'm
9 granting that objection and awarding you \$170 for
10 your fees instead of 100 that the Magistrate gave.

11 MR. NOWAK: Thank you, Your Honor.

12 THE COURT: So that one is done.

13 MS. MITCHELL: Okay. May I respond?

14 THE COURT: To what?

15 MS. MITCHELL: May I make a comment
16 about the award?

17 THE COURT: The fees?

18 MS. MITCHELL: Yes, please.

19 THE COURT: No. Now, the next one is
20 Mr. Nowak's motion to strike. This is May the
21 20th. I'm trying to take them by -- in the order
22 they came to us and struggling a bit here.

23 MR. NOWAK: You're doing fine, Your
24 Honor.

25 THE COURT: May the 20th is a motion

1 to strike Ms. Mitchell's objection to the
2 Magistrate's report. I think we can hear both
3 Ms. Mitchell's objection to the Magistrate's report
4 filed on May the 10th together with Mr. Nowak's May
5 the 20th report asking me to strike that, can we
6 not? They're both the same.

7 MR. NOWAK: We can, Your Honor, but in
8 order of logic it would seem that the motion to
9 strike should be determined first, because --

10 THE COURT: Okay.

11 MR. NOWAK: -- if the motion to strike
12 has merit it will save a lot of time and argument
13 here today.

14 THE COURT: Thank you. That's good.

15 MS. MITCHELL: Judge, I have a
16 problem. I don't have that.

17 THE COURT: You don't have --

18 MS. MITCHELL: No.

19 THE COURT: -- the May 20th motion,
20 huh?

21 MS. MITCHELL: No, I do not. You said
22 it was filed May 10?

23 THE COURT: Let's see what it says
24 here. It says a copy of the foregoing defendant's
25 motion to strike was mailed by US mail the 20th day

1 of May to Luann Mitchell, Post Office Box 08531.

2 You don't have that?

3 MS. MITCHELL: The caption again is
4 motion to strike my objection to the Magistrate's
5 report?

6 THE COURT: Defendant's motion to
7 strike objection to Magistrate's report and brief
8 in opposition to the objection.

9 MS. MITCHELL: No, I have not.

10 THE COURT: And that's basically his
11 motion to strike --

12 MS. MITCHELL: Right.

13 THE COURT: -- your appeal of
14 Magistrate Brown's opinion.

15 MS. MITCHELL: I do not have that. I
16 have not seen that.

17 THE COURT: You don't have it. Well,
18 maybe the mail service doesn't --

19 MR. NOWAK: Judge, I did serve it.

20 THE COURT: You did?

21 MR. NOWAK: I also notified her that
22 it would come on for hearing today. She's here
23 today. I think that this is additional lack of
24 candor before the Court.

25 MS. MITCHELL: Judge, I came to this

1 Court when I filed the document that's before the
2 Court, and your secretary, Sharon, told me that the
3 hearing was scheduled for today. She did not send
4 me an additional notice because I wrote down in my
5 program book that the hearing was scheduled today
6 at 10:00.

7 So as Mr. Nowak is saying that the
8 motion to notify me came in the same envelope, I
9 have no idea. I am stating to this Court and I am
10 representing to this Court I have never seen what
11 he is telling you now is his motion to strike my
12 objection to the Magistrate's report. And the way
13 I found out about the hearing was because I was in
14 court and I asked Sharon and she told me the date.

15 When I filed mine she wanted to know
16 and she was going to give me a date and she said
17 it's already scheduled for the 13th, today, and I
18 wrote it down.

19 MR. NOWAK: Your Honor, I can make the
20 same legal arguments in opposition to her
21 objections and make an oral motion to strike right
22 now and cure any defect that she now claims
23 exists. If you give me leave, I'll make that
24 motion.

25 THE COURT: I'm -- you know, I just

1 want to get through the docket this morning. If
2 she hasn't received a motion, then how she can be
3 prepared to answer it --

4 MR. NOWAK: Your Honor, she can answer
5 an oral motion before the Court --

6 THE COURT: Yep.

7 MR. NOWAK: -- which I'm prepared to
8 make.

9 THE COURT: All right. Let's do that.
10 In the meantime do you want me to make a copy of
11 this?

12 MS. MITCHELL: Yes, would you,
13 please? Thank you.

14 THE COURT: Go ahead.

15 MR. NOWAK: Your Honor, Ms. Mitchell's
16 objections to Magistrate Brown's report should be
17 denied because Civil Rule 53 requires her to submit
18 a transcript of the evidence below. Magistrate
19 Brown's report shows that evidence was received
20 from February 9th, 2005 to February 17th, 2005.
21 There was actually about four and a half days of
22 testimony, if you take away all of the continuances
23 and breaks.

24 Now, Magistrate Brown found that her
25 conduct was frivolous at page 13. That's a legal

1 conclusion. He made a factual conclusion that her
2 conduct was reckless, willful, deliberate and
3 unhalting at page twelve of his report. Under
4 Civil Rule 53 she was required to supply the Court
5 with a verbatim transcript of all that evidence if
6 she was going to attack the award of attorney's
7 fees made against her.

8 Instead, what she's done is she has
9 given this Court just little snippets of evidence.
10 She gave 28 pages of some self-serving testimony
11 she elicited from Attorney Patton. She enclosed a
12 little transcript of some closing arguments which
13 are not themselves evidence. She enclosed 11 pages
14 of testimony from one witness, Alan Sweet. She
15 included some excerpt of testimony with respect to
16 the granting of a continuance and then some proffer
17 that she made after everyone had left the
18 courtroom. She then offered 8 pages of opening
19 statement, which is not evidence. And then she
20 offered only 11 pages of her own testimony, but
21 there are many volumes of testimony that she is
22 shielding this Court from seeing by failing to
23 present it.

24 And instead, some of the evidence that
25 was even sought by Western Reserve for purposes of

1 Magistrate Brown's hearing she's now seeking to
2 admit it by attaching it to her objection. Now, we
3 object to any new evidence that she would offer
4 here, including the time records which she didn't
5 bring when she was subpoenaed to bring them, which
6 are Exhibit M. We object to all new evidence here.

7 She had an opportunity to present
8 evidence to Magistrate Brown; she waived it.
9 There's no showing of due diligence here that would
10 require this Court to give her leave to put in new
11 evidence. And by shielding this Court from all
12 those days of testimony she really wants to take a
13 blind side attack at Western Reserve, and Western
14 Reserve shouldn't have to prepare and present its
15 whole case again here in front of you.

16 I mean, I've got four and a half days
17 of questions in my briefcase. If you want me to
18 I'll put her up on the stand, but that's not the
19 way the system works and you shouldn't be required
20 to decide this in a vacuum.

21 If you're to evaluate Magistrate
22 Brown's conclusions, legal conclusions and factual
23 conclusions, you ought to have the same evidence
24 that he had. And because she didn't give it to
25 you, deliberately, only gave you part of it, this

1 whole thing is improperly before the Court, and on
2 that basis alone this Court should immediately just
3 overrule those objections and we should all go
4 home.

5 THE COURT: How do you respond?

6 MS. MITCHELL: Yes, thank You. Judge,
7 first of all, I would certainly indicate to you
8 that Mr. Nowak has made some severe
9 mischaracterizations. I have no monetary
10 obligation to order transcripts from four and a
11 half days of hearings. Certainly if I quote from
12 the transcript I then must give you that
13 transcript, and that is what I ordered to the
14 expense of almost \$500. And those are the
15 excerpts. Certainly to have ordered the entire
16 transcript would have been cost prohibitive, nor
17 was it necessary for today's hearing, that being
18 objections to the Magistrate's report.

19 The other thing that Mr. Nowak just
20 indicated is that I'm attempting to offer at
21 today's hearing new evidence. If Mr. Nowak reads
22 the rules, the rules indicate that at today's
23 hearing you, as the judge, are permitted to take
24 additional evidence, and so I would certainly
25 object to his characterization that I'm trying to

1 do something outside the parameters of the rules
2 because the rules do provide for you to take
3 additional evidence.

4 I disagree, certainly, with Mr. Nowak
5 making -- doing an oral motion indicating that he
6 had served me. Certainly I would have liked the
7 opportunity to do a written response to Mr. Nowak,
8 but in -- since you did rule that we were going to
9 move forward, I would indicate to you that this
10 case does need to come back before the Court
11 because the testimony or the information that
12 Magistrate Brown wrote in his report is certainly
13 inappropriate and skewed.

14 What this Court needs to hear are the
15 facts of this case. Magistrate Brown's report
16 talks about attitude, aptitude and never once
17 mentions what's really going on in this case.
18 Magistrate Brown's report fails to mention a very
19 important part of this case, which is that on two
20 occasions Mr. Nowak's client had been told to pay
21 to Mrs. Washington monies that are due. After
22 being told that, there is proof that I read into
23 the record, which was the September 19, 2002
24 letter.

25 That letter indicated that Mr. Nowak

1 had then tried to go back several months earlier,
2 in January of 2002, and ask the State Hearing Board
3 to reopen the issue. What the State Hearing Board
4 told Mr. Nowak, and the letter went to Mr. Nowak
5 and a CC copy went to Karen Vrtunski, his client,
6 that has other than today been sitting in the
7 courtroom, that they cannot reopen the issue, that
8 the issue is final and settled and binding upon the
9 agency pursuant to the Ohio Administrative Code,
10 Chapter 51, and that they must pay Mrs. Washington.
11 So I don't believe that it is relevant that
12 Mr. Nowak is making other innuendos.

13 What is relevant for today's hearing
14 is that this Court, having sat through hearings for
15 five years, is well aware that Mr. Nowak's clients
16 were told to pay Mrs. Washington, they have not
17 done it, and that is what should have been
18 addressed as testimony was brought out by
19 Magistrate Brown in his Magistrate's decision dated
20 April the 6th of 2005. Your review of that
21 Magistrate's decision will notice that there is no
22 indication that Magistrate Brown even dealt with
23 that.

24 And what he dealt with instead, as I
25 indicated, were what he perceived as attitudes and

1 aptitude problems and indicated that he was
2 somewhat taken aback that the hearing had lasted
3 for a number of days and it could have been done in
4 an hour and a half. What certainly needs to come
5 to this Court's attention, because this Court was
6 not present at that hearing, the several hearings
7 in February, was that nothing new came up, Judge
8 Corrigan. It was the same thing that we've gone
9 over for the last few years.

10 And what Mr. Nowak did at that hearing
11 for those days that Mr. -- or Magistrate Brown
12 indicates were wasted time, Mr. Nowak brought in
13 transcripts from the previous hearing where you
14 presided over and based on you presiding over that
15 hearing you made a ruling, which were several
16 subrulings, on October 24 of 2003 finding that I
17 had not committed frivolous conduct or had violated
18 Civil Rule 11 and that therefore you would not
19 sanction me accordingly, as Mr. Nowak had been
20 requesting.

21 When Mr. Nowak came before this Court,
22 and it was before Magistrate Brown for those
23 hearings in February of 2005, if there was time
24 wasted it was because Mr. Nowak brought the
25 transcripts with him and proceeded to try to

1 impeach my testimony on -- by having the transcript
2 printed and asking me the same questions to
3 determine if I would give the same answers for
4 purposes of impeachment.

5 So I think it is a severe
6 mischaracterization in Magistrate Brown's -- the
7 Magistrate's order that if there was any waste of
8 time it's certainly attributable to Mr. Nowak.

9 THE COURT: Can you get that --

10 MR. NOWAK: Your Honor, may I quote
11 from Civil Rule 53 for a moment?

12 THE COURT: Right.

13 MR. NOWAK: Civil Rule 53(E)(3)(c)
14 says, in part, any objection to a finding of facts
15 shall, shall, be supported by a transcript of all
16 the evidence submitted to the Magistrate relevant
17 to that fact or an affidavit of that evidence if a
18 transcript is not available.

19 Now, clearly in this case, Your Honor,
20 a transcript is available. She decided to pick and
21 choose what parts she wanted to submit in support
22 of her objection. I'd also point out to the Court
23 that Civil Rule 53(E)(4)(b) provides in part that
24 the Court may refuse to consider additional
25 evidence proffered upon objections unless the

1 objecting party demonstrates that with reasonable
2 diligence the party could not have produced that
3 evidence for the Magistrate's consideration.

4 There's been no such showing here. Your Honor,
5 summarily her objections should be stricken.

6 MS. MITCHELL: Judge, I certainly
7 disagree with that characterization. What
8 Mr. Nowak is telling you is that I picked and chose
9 what I wanted to discuss when I filed objections to
10 the Magistrate's report. That's incorrect. What I
11 filed with this Court were excerpts of transcripts
12 that were relevant to the objections that I filed
13 before this Court. I did not object to the entire
14 hearing, so what I filed with this Court were those
15 excerpts that should properly come before the
16 Court.

17 Also, Judge, I think that is
18 unconscionable that Mr. Nowak would assume that
19 this office, as you're well aware, Mrs. Washington
20 is now deceased, would incur an expense having an
21 entire transcript printed that wasn't relevant. So
22 what we did do was to expense out the parts of the
23 transcript that were relevant that we brought
24 before this Court, and the parts that were not
25 relevant, that we're not objecting to, we did not

1 attach as part of the record.

2 THE COURT: Okay. Is there anything
3 else on this matter then before I make a ruling on
4 this?

5 MR. NOWAK: No, Your Honor.

6 THE COURT: She has an objection.
7 Your position is that if I grant your motion that
8 her objection to Magistrate Brown's report is not
9 necessary to be heard, correct?

10 MR. NOWAK: That's correct, Your
11 Honor. It should be stricken because it's legally
12 insufficient. It's not supported as required by
13 Rule 53.

14 THE COURT: Yes. I agree. So that's
15 the end of it. Good.

16 MR. NOWAK: Your Honor, may I in
17 closing ask that when the Court issues an order
18 granting Western Reserve's objection in calculating
19 attorney's fees at \$170 an hour that the Court
20 actually do the math so Western Reserve has a
21 judgment for an amount certain. Thank you very
22 much, Your Honor.

23 THE COURT: Okay. Thank you.

24 MS. MITCHELL: Judge, am I allowed by
25 oral motion to make a statement that I would have

1 attached as an affidavit?

2 THE COURT: No. I've heard enough in
3 this case. Thank you.

4 (Hearing concluded at 11:09 a.m.)
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C E R T I F I C A T E

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The State of Ohio,) SS:
County of Cuyahoga.)

I, Laura L. Ware, a Notary Public within and for the State of Ohio, do hereby certify that this hearing was reduced by me to stenotype in the presence of said parties, subsequently transcribed into typewriting under my direction, and that the foregoing is a true and correct transcript of the hearing so given as aforesaid.

I do further certify that this hearing was taken at the time and place as specified in the foregoing caption, and that I am not a relative, counsel, or attorney of either party, that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28 (D), or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, this 20th day of July, 2005.



Laura L. Ware, Ware Reporting Service
21860 Crossbeam Lane, Rocky River, Ohio 44116
My commission expires May 17, 2008.

APPENDIX

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In Re:	:	
Complaint against:	:	Case No. 06-007
Luann Mitchell, Attorney Reg. No. 0007205	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Cleveland Bar Association	:	
Respondent	:	
	:	

INTRODUCTION

{¶1} This matter was heard on April 23 and 24, 2007, in Columbus, Ohio, before a panel consisting of members Sandra Anderson, Lisa M. Lancione Fabbro and Judge Arlene Singer, Chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint. Attorneys Geoffrey Stern and Rasheeda Khan represented respondent. Attorneys Sheila A. McKeon, and Timothy Fitzgerald represented the relator, the Cleveland Bar Association.

PROCEDURAL BACKGROUND

{¶2} The complaint in this matter was filed on February 13, 2006, containing allegations of violations by respondent of the Code of Professional Responsibility, specifically:

Count. I. – Respondent is charged with dishonesty and falsification.

DR 1-102 (A) A lawyer shall not:

- (4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (5) engage in conduct that is prejudicial to the administration of justice;
- (6) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

DR 7-102 (A) in his representation of a client, a lawyer shall not

- (4) knowingly used perjured testimony or false evidence;
- (5) knowingly make a false statement of law or fact;
- (6) participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

Count. II. – Respondent is charged with filing of unwarranted court actions and failure to comply with various court orders.

DR 7-102 (A) in his representation of the client, a lawyer shall not

- (1) file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows, or when it is obvious that such action would serve merely to harass or maliciously injure another.
- (2) knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

Count III. – Respondent is charged with having a misdemeanor theft conviction and failure to properly register her address with the Supreme Court of Ohio.

DR 1-102 (A) A lawyer shall not:

- (3) engage in illegal conduct involving moral turpitude;
- (4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (5) engage in conduct that is prejudicial to the administration of justice;
- (6) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

Gov.Bar R. VI (1)(D):

Each attorney who was admitted to the practice of law in Ohio, shall keep the Attorney Registration Section apprised of the attorney's current residence address and office address and shall notify the Attorney Registration Section of any change on any information on the Certificate of Registration.

FINDINGS OF FACT

{¶3} Respondent has been licensed to practice law in the state of Ohio since 1983. She graduated from the University of Virginia School of Law. Respondent worked as a warden at the Ohio Department of Insurance, and practiced for 11 years at

the UAW/Ford-G.M. legal office, focusing on collection litigation cases. Respondent claimed she is now retired and does not currently have an active practice. However, she did admit to handling guardianship estates for senior citizens and related legal work.

"I keep a stable of 23 seniors that I'm able to assist, and that's based on the number of adult day care workers and home health aides that I have available to me. I would never take more than the 23, because I could not provide them with quality. So I kept them then, and I still have them now. And when they die off, I replace them; and I normally keep a stable of about 23 of them." Tr., 224.

{¶4} In 1999, respondent was appointed by the Cuyahoga County Probate Court as the guardian of the person and estate of Bertha L. Washington., who was approximately 90 years old. Ms. Washington had been enrolled in Ohio's PASSPORT program since 1994. The PASSPORT program provides services for homebound Medicaid recipients, and a person confined to a nursing home or rehabilitation facility may not participate in the program. The PASSPORT program was administered in Cuyahoga County by the Western Reserve Area Agency on Aging (WRAAA).

{¶5} On October 25, 1999, Mrs. Washington was hospitalized and then transferred on November 3, 1999 to a rehabilitation center with an estimated discharge date of February 5, 2000. WRAAA proposed to disenroll her from the PASSPORT program because, as she was confined in a rehabilitation facility, she was no longer eligible to participate in the program. The respondent then began filing a series of actions in various courts and agencies.

{¶6} Respondent filed a timely appeal of the PASSPORT removal to the Ohio Department of Human Services (now, the Ohio Department of Job and Family Services.) The appeal was overruled on March 28, 2000. However, the opinion of the hearing

officer stated that Washington's benefits may not be discontinued during the pendency of the appeal. The decision was affirmed on April 27, 2000.

{¶7} Respondent requested another hearing on the issue of reimbursement of expenses during the pendency of the first appeal and also on an allegation that the WRAAA refused Mrs. Washington's application to reenroll in the PASSPORT program. On June 21, 2000, the state hearing officer determined that WRAAA owed benefits "at the previous level" for the period of February 5, 2000 to March 28, 2000 (the date from Mrs. Washington's discharge from the rehabilitation facility to the date her first administrative appeal was overruled) and found that WRAAA had not refused the application. The state hearing officer also ordered reimbursement by WRAAA for "the care she paid for during this period."

{¶8} In response to the State's decision, WRAAA sent a letter to respondent on July 3, 2000 requesting that she provide documentation and specific information about the persons or entities that provided reimbursable PASSPORT services during that period, in order that reimbursable benefits be paid according to the order of the state hearing board. Respondent did not respond. This was the beginning of a pattern of requests by WRAAA and non-response by respondent, including at least four appearances before a magistrate and several judges, in an effort to obtain the documentation.

{¶9} In April 2001 respondent filed an "Ex Parte" motion to enforce judgment against WRAAA in the Cuyahoga County Probate Court. She did not serve WRAAA or its counsel, claiming it was not a party.

{¶10} WRAAA, through counsel, on May 18, 2001 wrote to respondent requesting additional information as requested previously, including the names of the service providers so that it could be determined if the service providers were certified PASSPORT service providers, without which information WRAAA could not determine the reimbursable expenditures.

{¶11} Respondent never responded.

{¶12} On August 1, 2001 WRAAA served a notice of deposition duces tecum on respondent in an attempt to obtain the needed information. Prior to the date of the deposition, the magistrate in the Cuyahoga Probate Court held a hearing to resolve matters. He was told that WRAAA was still waiting for the information. Respondent told the magistrate that she had provided the information to another attorney at the law firm representing WRAAA, which that counsel denied. Respondent was again told by the magistrate to provide the information.

{¶13} On November 9, 2001, respondent produced a one-page document listing expenditures of \$29, 577, with no receipts or other supporting documentation.

{¶14} The Probate Court (Judge Corrigan) dismissed the ex parte motion on January 4, 2002 for lack of jurisdiction.

{¶15} On February 15, 2002 respondent filed in the same Probate Court a Complaint for Declaratory Judgment to find that WRAAA owed Mrs. Washington \$31,527.

{¶16} WRAAA continued to attempt to obtain complete information

(substantiating the claimed reimbursements) from respondent, including filing additional notices of deposition, and a motion to compel discovery. Respondent did not appear or respond.

{¶17} Respondent filed a motion to quash the subpoena after again failing to appear at one of the depositions. The next deposition scheduled could not proceed because of the pending motion to quash.

{¶18} On May 9, 2002, the magistrate issued a report ordering respondent to submit her documentation for her claims at a deposition on May 29, 2002 and overruled the motion to quash. Respondent failed again to appear for this deposition.

{¶19} On June 18, 2002 (pursuant to the magistrate's direction to respondent to advise the court and counsel when she could appear for a deposition) everyone agreed that respondent would appear for her deposition, bringing the appropriate documents with her on July 15, 2002. This agreement followed numerous notices of deposition which respondent ignored, motions to compel and to show cause filed by counsel for WRAAA, and orders from the probate court magistrate to appear.

{¶20} On June 24, 2002 respondent commenced an emergency proceeding before Judge Richard McMonagle in the General Division of the Cuyahoga County Common Pleas Court, seeking an order to collect over \$31,000 in expenses for Mrs. Washington from WRAAA.

{¶21} Judge McMonagle scheduled a hearing on the motion for June 26, 2002. Respondent dismissed the declaratory judgment action (pending in Probate Court) that day and submitted some evidence regarding the claimed expenditures before Judge McMonagle. Respondent later testified before this disciplinary panel that she dismissed

the declaratory judgment action because she felt she did not have time and she had already won two administrative decisions, then she contradicted herself and said that the declaratory judgment action was dismissed because of an explanation by the magistrate that she should dismiss and do something else.

{¶22} Counsel for WRAAA explained to Judge McMonagle at the June 26th hearing that his client had been trying to obtain information for almost 2 years. Judge McMonagle dismissed the proceeding. Respondent later testified to this disciplinary panel that this action was dismissed because Judge McMonagle advised her it would be better to file it on a regular docket.

{¶23} WRAAA served a notice for deposition on respondent for July 26, 2002, for which respondent did not appear. Instead on that date, respondent filed an action against WRAAA in the Cuyahoga County Common Pleas Court, assigned to Judge Ann Mannen.

{¶24} On July 31, 2002 WRAAA filed another motion to compel discovery in Probate Court which the magistrate granted on December 30, 2002, ordering respondent to appear for a deposition in January 30, 2003. Respondent filed objections to the court, causing the January 30th date to be vacated. Judge Corrigan overruled respondent's objections and ordered her to appear for a deposition.

{¶25} On August 21, 2002, responding to a letter from respondent, an Ohio Department of Job & Family Services official wrote: "I understand that to date, you have not submitted the requisite verifications to [WRAAA], and therefore they have been unable to provide you with the reimbursement. I consider the actions taken by [WRAAA] to meet the order of the decision, because as they wrote, upon receipt of the necessary information, they will reimburse Ms. Washington, as ordered. If you disagree

with this decision, you have the right to another appeal.” Respondent did not appeal.

(Nor did she ever assemble or produce the “necessary information.”)

{¶26} Judge Mannen dismissed the Common Pleas Court action on March 10, 2003.

{¶27} Respondent finally appeared, with counsel, for a deposition on March 25, 2003. However, she did not bring all the documents to support the claimed expenditures, causing the deposition to be suspended. In another effort to obtain the complete documentation, the court ordered respondent to provide a date for the resumption of her deposition and for her to bring the requested documents. She did not comply.

{¶28} WRAAA filed a motion to show cause. Respondent failed to appear at that hearing.

{¶29} In September, 2003 respondent filed a Writ of Mandamus in the Court of Appeals to compel the Ohio Department of Aging to reimburse Washington's estate more than \$31,000 in expenditures, pursuant to the state hearing board's order of March 28, 2000, and compelling the Ohio Department of Aging to terminate all funding for WRAAA's Passport Program. Respondent testified that she did not remember why this action was dismissed.

{¶30} On October 27, 2003 Judge Corrigan removed respondent as guardian of the estate of Washington. Respondent remained as guardian of the person.

{¶31} WRAAA filed for sanctions pursuant to Civ. R. 11 and R.C. 2323.51. In October, the probate court denied this motion as well as respondent's application for her fee.

{¶32} The parties separately appealed these judgments to the Eighth District Court of Appeals, which reversed and remanded the cases to the Probate Court to determine the appropriate amount of damages.

{¶33} The Probate Court then calculated the amount of attorney fees and awarded as sanctions to WRAAA \$42,815.79 and fees for respondent in the amount of \$1,525. Respondent appealed that judgment. The appellate court affirmed the probate court as to the guardianship fees owed to respondent, but reversed the amount of sanctions awarded to WRAAA and remanded the matter for recalculation. A judgment was ultimately issued against respondent for sanctions in the amount of \$28,000. Respondent appealed; however, this appeal was dismissed because she did not timely file the notice. She then filed a motion in the appellate court to reinstate the appeal and for extension of time to file the record. This was denied. The sanctions still have not been paid.

{¶34} Respondent has continuously testified that she gave receipts to WRAAA, but has no documentation. She also testified that she gave the attorney for WRAAA the receipts, but he refused to accept them.

{¶35} Respondent provided some documentation during the discovery phase of this disciplinary matter and which was presented to this panel. The documentation is incomplete. It is impossible to determine if the services for which she has claimed reimbursement are PASSPORT covered services, or from PASSPORT approved providers. Some names and addresses of the claimed providers were not provided. Some bills were provided, but few receipts. The cancelled checks and receipts that were presented did not total the amounts claimed. There was no substantiation for some of the services and most of the payments claimed.

{¶36} Respondent presented some receipts for cash that totaled far less than the claimed expenses. For example, documentation for payment of \$3007 for home care, errands, food preparation etc. by cancelled checks totalling \$985, and cash receipts totaling \$2022, were shown. The checks were included in several years worth of bank statements that were entered as a relator's exhibit. Respondent's witnesses testified about the cash receipts. However, the total claimed for reimbursements for these types of services was just over \$8000. In addition, the panel has substantial doubts as to the persuasiveness of the cash receipts as evidence and the credibility of the respondent's witnesses who testified about these receipts. One of respondent's witnesses attempted to explain why a receipt for cash she received from respondent in 2000, was dated 2002. This testimony was simply not only *not credible* but *incredible*.

{¶37} Respondent claimed she often paid by "counter check" rather than by fiduciary check. However, no cancelled "counter-checks" were produced. (Counter checks for the a different time period were included with the cancelled checks in her bank records, so it is obvious that these cancelled counter checks are kept by the bank in the account). No bank statements for that relevant period of time were produced, even though requested.

{¶38} Respondent finally explained her procedure for her claimed payments. She would give a check to the so-called provider, but ask the provider to hold the check, because there was not enough money in the account. If the provider really needed the money, the check was to be returned and respondent would pay cash. Or the checks would be returned because they were stale. Because she gave a check, even under these circumstances, she considered the provider paid. Respondent's witnesses testified that

this was the procedure. However, there was ample witness testimony that many of the providers have not been paid yet. In fact, some of them felt they were tricked or cajoled into what amounted to a donation of goods and services.

{¶39} Respondent submitted a claim for certain computer services to Judge McMonagle. After WRAAA's attorney pointed out that the documentation appeared to be not related to this claim, she substituted another one, claiming a mistake.

{¶40} Respondent claimed she didn't know whether one of the claimed providers, Dr. Lonergan, was paid. There is no payment documentation.

{¶41} Respondent was charged with theft of electrical equipment in September 2002. Respondent had an altercation with employees of the Cleveland Illuminating Co. over a meter. The Illuminating Co. had been changing old meters, which apparently caused her monitoring computers to crash. Respondent claims that during the altercation she was injured, so she took the meter to use as an exhibit, refusing to return the meter to the police department. She was convicted after a jury trial, sentenced to 30 days in jail, suspended with conditions for one year and fined \$1258, which is now paid.

{¶42} In her Answer to relator's Complaint, respondent admitted that the Eighth District Court of Appeals affirmed the theft conviction in Lyndhurst Municipal Court. She then appealed to the Ohio Supreme Court. This appeal was not accepted. Respondent notified the Lyndhurst court of her intentions to file an appeal in the United States Supreme Court. Respondent did not appear for sentencing, a *capias* was issued, and she was incarcerated for 3-4 days.

{¶43} Further, respondent admitted in her Answer that she was charged with disorderly conduct at Builder's Square in December, 2001.

{¶44} Respondent claimed that she notified the Ohio Supreme Court of Ohio of her residence address, which she refused to disclose at the hearing. Moments later, respondent testified that she preferred that opposing counsel write to her at her P.O. Box, "that's where I'm registered." The Supreme Court records list only her post office box address under the confidential information section of her registration records.

Respondent's explanation for disclosing only a P.O.Box address is implausible and insufficient. "I don't want you serving legal papers at my home address. I want them to go to my P.O. Box and then the secretary can pick them up directly from the P.O. Box." However, she then testified that she did not have a full-time secretary, and could not, or would not, identify any secretary or assistant she has employed.

{¶45} Respondent has also been sanctioned by the Probate Court for not attending one of depositions referred to previously, and ordered to pay \$185 attorney fees to WRAAA.

CONCLUSIONS OF LAW

{¶46} The panel unanimously finds by clear and convincing evidence that respondent committed the following violations as charged in:

Count I

DR 1-102 (A) A lawyer shall not:

- (4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (5) engage in conduct that is prejudicial to the administration of justice;
- (6) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

DR 7-102 (A) in his representation of a client, a lawyer shall not:

- (4) knowingly used perjured testimony or false evidence;
- (5) knowingly make a false statement of law or fact;
- (6) participate in the creation or preservation of evidence when he knows or it obvious that the evidence is false.

Count II

DR 7-102 (A) in his representation of the client, a lawyer shall not:

- (1) file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows, or when it is obvious that such action would serve merely to harass or maliciously injure another;
- (2) knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

Count III

DR 1-102 (A) A lawyer shall not:

- (5) engage in conduct that is prejudicial to the administration of justice;
- (6) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

Gov.Bar R. VI (1) (D):

Each attorney who was admitted to the practice of law in Ohio, shall keep the Attorney Registration Section apprised of the attorney's current residence address and office address and shall notify the Attorney Registration Section of any change on any information on the Certificate of Registration.

{¶47} The panel finds that relator has not presented clear and convincing evidence that respondent's misdemeanor theft conviction contained in Count III rises to illegal conduct involving moral turpitude, as required under DR1-102 (A) (3). See *Disciplinary Counsel v. Burkhardt*, 75 Ohio St. 3d 188, 1996-Ohio-121; *Disciplinary Counsel v. Klaas*, 91 Ohio St. 3d 86, 2001-Ohio-276 and *Disciplinary Counsel v. Cirincione*, 102 Ohio St. 3d 117, 2004-Ohio-1810, or that respondent's conduct amounted to dishonesty, fraud, deceit or misrepresentation in violation of DR 1-102 (A)(4).

{¶48} While the respondent's refusal to disclose her required addresses has aided her in claiming lack of notice as an excuse for her non appearances at various courts and depositions, the panel declines to find deceit as required under DR1- 102(A)(4).

{¶49} Therefore, the panel recommends dismissal of violations of DR1-102 (A) (3) and (4) contained in Count III.

AGGRAVATION AND MITIGATION

{¶50} The panel finds pursuant to BCGD Proc. Reg. 10 (B) (2) in mitigation the following. The respondent has no prior disciplinary record and has submitted letters and testimony attesting to her good works and dedication to the elderly persons in her care, especially Mrs. Washington. She has been fined and sanctioned substantially for her conduct by the Cuyahoga County Probate Court and the Lyndhurst Municipal Court. The panel is satisfied that Ms. Washington was well cared for and well served by respondent, whose efforts improved Mrs. Washington's quality of life significantly, allowing her to enjoy her last days with relative comfort and dignity.

{¶51} The panel finds pursuant to BCGD Proc. Reg. 10 (B) (1) in aggravation the following. Relator has not proven financial misconduct for personal financial gain by clear and convincing evidence; however, respondent has acknowledged keeping three laptop computers that were part of the home monitoring system. When Mrs. Washington died, respondent kept one, one went to respondent's mother, and one was given to Mrs. Washington's church. (There has never been a payment to anyone for them.) The panel finds a pattern of misconduct, multiple offenses, submission of false evidence, false statements during the disciplinary process, refusal to acknowledge the wrongful nature of her conduct. Her actions may have harmed any PASSPORT approved or legitimate contractors who might have been paid if the respondent would have timely presented appropriate verification. Her actions also have caused actual expense and burden to WRAAA, which repeatedly faced baseless litigation filed by respondent over the course

of several years. Respondent has not yet paid the \$28,000 sanction to WRAAA, as ordered by the Probate Court for attorney fees incurred by WRAAA. Respondent stated she did not believe that the sanctions are due until "I have run the course of every action entitled to me." When asked about her style of litigation, she replied. "... I don't cut corners, very direct. I have a firm commitment to the right is right and wrong is wrong, and I don't cut deals. If you owe my clients money, then you need to pay my clients their money. If you have wronged my client, then my client is entitled to damages." "Well, in the collection area, if one thing gets dismissed, you have to revamp your strategy and refile it some other kind of way. If the underlying debt is valid, and it's a basis in which you still have to collect for your client, you just have to rework it so that ultimately your client still gets moneys that were due to them. So if one avenue didn't work, as lead collection attorney, you devise another avenue."

{¶52} It is an understatement to say that respondent's testimony was troubling. Her statements are self laudatory and self serving. She has a convenient lapse of memory. She was evasive, argumentative, illogical, and inconsistent and the panel found that she had little credibility.

{¶53} Respondent apparently makes up her own rules with no apology. Respondent's attitude can best be shown by her testimony.

{¶54} Respondent testified that she has to go back to the Probate Court to continue her quest. She apparently intends to continue, even though Mrs. Washington died over three years ago.

{¶55} She unabashedly refuses to give her residence address. The evidence and testimony was replete with instances of her argumentativeness with WRAAA, the

Department of Human Services, other lawyers, Cleveland Illuminating Co., judicial officers and judges, as well as her testimony before the panel. Her tenacity and stubbornness are not traits to be admired, as in her zeal and for whatever her motivation is, she has demonstrated unprofessional conduct, dishonesty and disrespect for the judicial system.

PANEL RECOMMENDATION

{¶56} The relator requests an indefinite suspension. Respondent requests dismissal of the charges.

{¶57} We are mindful of the directives from the Ohio Supreme in *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St. 3d 187, 1995-Ohio 261 “When an attorney engages in a course of conduct resulting in a finding that the attorney has violated DR 1-102(A) (4), the attorney will be actually suspended from the practice of law for an appropriate period of time.” We are accordingly compelled to recommend an actual suspension based on the dishonesty found by the panel.

{¶58} Respondent reminds us that mitigating evidence can justify a lesser sanction. See also *Dayton Bar Assn. v. Kinney*, 89 Ohio St.3d 77, 2000-Ohio-445. We recognize that Mrs. Washington, respondent’s client and ward, seems not to have been harmed; in fact, she seemingly thrived under respondent’s care.

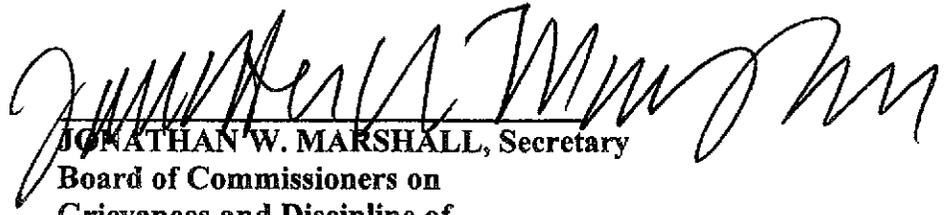
{¶59} However, we have found that respondent’s actions otherwise were pervasive, and that respondent has no remorse. She has multiple violations in addition to the DR 1-102 (A)(4) violation. Respondent has deviated from truth, logic, and perhaps reality, but certainly from the standards required of an attorney.

{¶60} The panel recommends that respondent be suspended from the practice of law for 18 months, with the last 12 months stayed on the following conditions: that respondent commit no further misconduct; that respondent complete, in addition to the required hours, an additional 3 hour CLE course in ethics and professionalism and 3 hours in probate and guardianship law; that respondent serve a 12 month period of probation to commence after the initial 6 month suspension; and that the relator appoint a monitor to assist her in complying with her obligations to practice law ethically and professionally.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on August 10, 2007. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. The Board recommends that the Respondent, Luann Mitchell, be suspended for a period of eighteen months with twelve months stayed upon the conditions contained in the panel report. The Board also determined that the Respondent should make restitution in the amount of \$28,000 and provide a valid residence address to the Supreme Court of Ohio. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio