

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF  
THE GUARDIANSHIP OF  
JOHN SPANGLER

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CASE NO. 2009-0121

On Appeal from the  
Geauga County Probate  
Court of Appeals, Eleventh  
Appellate District

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APPELLEE JOHN SPANGLER'S MEMORANDUM IN SUPPORT  
OF APPELLEES GABRIELE AND JOSEPH SPANGLERS'  
MOTION TO DISQUALIFY

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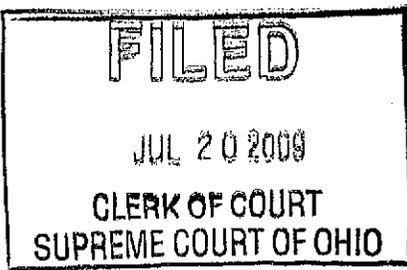
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**APPELLEE JOHN SPANGLER'S MEMORANDUM IN SUPPORT  
OF APPELLEES JOSEPH AND GABRIELE SPANGLER'S  
MOTION TO DISQUALIFY**

Now comes Appellee John Spangler and hereby submits this Memorandum in Support of Appellees Gabriele and Joseph Spangler's Motion to Disqualify Franklin J. Hickman and Judith C. Saltzman as counsel for Appellant Geauga County Board of MR/DD. Although Appellee John Spangler did not establish an attorney-client relationship with Mr. Hickman, John Spangler was the subject of the consultation when Ms. Spangler established an attorney-client relationship with Mr. Hickman. Additionally, when Ms. Spangler consulted with Mr. Hickman in June of 2006, she was John Spangler's guardian. Affidavit of Gabriele Spangler, ¶ 9, attached hereto as Exhibit A and incorporated herein (hereafter "Affidavit"). In fulfilling her role as guardian of John Spangler, Ms. Spangler was acting on his behalf and was consulting with Mr. Hickman about John Spangler's legal rights and remedies. See, generally, R.C. 2111.13 (guardian's duty to provide suitable maintenance and protection to ward). Thus, as the subject of the guardianship and the consultations, John Spangler has a strong interest in the outcome of this Motion to Disqualify Counsel even though he did not participate in the consultations between Ms. Spangler and Mr. Hickman.

The two consultations between Ms. Spangler and Mr. Hickman involved confidential information about John Spangler's legal rights and remedies, as well as the provision of his care and services through the Geauga County Board of MR/DD. At the first meeting between Gabriele Spangler and Frank Hickman, Ms. Spangler specifically spoke with Mr. Hickman about John's legal rights and remedies. See, Affidavit, ¶13 and 14. At that same time there was a discussion about the Geauga County Board of MR/DD's provision of services to John, and the assault upon John that took place at Warrensville Developmental Center. *Id.* at ¶12. There was

even discussion about Mr. Hickman filing a case on John's behalf. *Id.* at ¶14. As the subject of the guardianship, the nature of the information provided in these consultations could potentially have a large impact on John Spangler's future.

This Court has previously held that "[w]here an attorney himself represented a client in matters substantially related to those embraced by a subsequent case he wishes to bring against the former client, he is irrebuttably presumed to have benefitted from confidential information relevant to the current case. In such limited situations there is no necessity to demonstrate actual exposure to specific confidences which would benefit the present client." *Carr v. Acacia Country Club* (Feb. 12, 2009) 2009-Ohio-628, (citing *Cleveland v. Cleveland Electric Illuminating Co.* (1976), 440 F.Supp. 193, 210). Given the closeness of the relationship between John Spangler and his guardian who was acting on his behalf, the attorney-client relationship between Ms. Spangler and Mr. Hickman, and the subject and nature of the consultations and between them, this irrebuttable presumption should apply in this matter. The consultations between Mr. Hickman and Ms. Spangler create an irrebuttable presumption that Mr. Hickman benefitted from the confidential information that was disclosed about John Spangler. Having received confidential information, Mr. Hickman and his firm should be disqualified on conflict of interest grounds. See, *Carr v. Acacia Country Club*.

Likewise, attorney Judith Saltzman should be disqualified as co-counsel from this case due to her association with the law firm of Frank Hickman. Rule 1.10(a) of the Ohio Rules of Professional Conduct provides that:

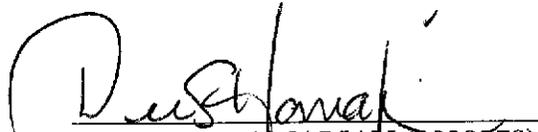
[w]hile lawyers are associated in a firm, none of them shall represent a client when the lawyer knows or reasonably should know that any one of them practicing alone would be prohibited from doing so by Rule 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the

client by the remaining lawyers in the firm.

The basis for disqualification of Judith Saltzman lies not in a personal interest of Mr. Hickman, but rather in the confidential information received by Mr. Hickman. Because Mr. Hickman should be disqualified from this case, that disqualification should be imputed to Ms. Saltzman as a member of the same law firm pursuant to Rule 1.10(a) of the Ohio Rules of Professional Conduct.

As the subject of the personal and confidential information disclosed to Mr. Hickman, John Spangler claims an important interest in the disqualification of Mr. Hickman and Ms. Saltzman. Based on that interest, he respectfully urges this Court to grant Appellee Joseph and Gabriele's Motion to Disqualify.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

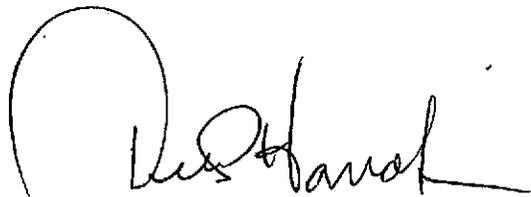
A copy of the above-styled Memorandum in Support was served upon the following by ordinary U.S. Mail on this 20<sup>th</sup> day of July, 2009.

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