

PETITION FOR EXTRAORDINARY WRITS OF MANDAMUS, PROHIBITION
AND ALTERNATIVE WRITS

This original action is brought in the name of the State on the relation of Aristides Jurado and his son N.G., a minor child, who seek expedited injunctive relief, as well as extraordinary and alternative writs from this court as follows: **(1)** a preemptory writ of mandamus to compel Respondents Office of Disciplinary Counsel and Amy C. Stone, Assistant Disciplinary Counsel, to carry out their legal duty of investigating the grievance filed by Relator A.J. on his own and his son's behalf, after being aggrieved by a licensed attorney while acting as an officer of the court in the role of Guardian Ad Litem ("GAL-Attorney" or "GAL")¹; **(2)** in addition or in the alternative, declaratory relief addressing questions of law presented, and probable cause of the grievance for misconduct; **(3)** a writ of prohibition to prevent Respondents Franklin County Court of Common Pleas, Domestic Relations Division, Juvenile Branch, et al. ("the Juvenile Court") from further exercising judicial power that is unauthorized by law, in the Juvenile (Custody) Case No. 12JU-11-14479; **(4)** a writ of mandamus to require the Juvenile Court, Judge and Magistrate to exercise certain judicial duties, which are currently being avoided or neglected; **(5)** an expedited alternative writ and immediate provisional injunctive relief to stay proceedings to avoid additional irreparable harm.

¹ Because a disciplinary grievance proceeding is private under Gov. Bar R. V, unless and until declared public under the provisions of Gov. Bar R. V(11)(E), we refer to the alleged offender as "GAL-Attorney" or simply "GAL". Any identifying information has been omitted to the best of our ability, including the filing of Exhibits under seal, to allow the court to determine if any or all documents should be unsealed for the protection of the public, based on the discretion of the court and if necessary, an in-camera review of the documents.

PARTIES

1. Relator Aristides Jurado (“A.J.”) is resident of the State of Ohio, County of Franklin, is the natural father of N.G. (the “Child” or “Minor Child”), and the Respondent party in the Custody Case² number 12JU-11-14479 of the Franklin County Common Pleas Court, Domestic Relations Division, Juvenile Branch.

2. Relator N.G. (the “Child” or “Minor Child”), who is the subject of the custody dispute between the child’s mother and Relator A.J.—a case still pending under the exclusive jurisdiction and protection of the Juvenile Court.

3. Respondent Honorable Terri Jamison is a duly elected Judge for Franklin County Court of Common Pleas, Domestic Relations Division, Juvenile Branch, (“The Juvenile Court”) who is presiding over the case above for the allocation of parental rights and responsibilities (“custody”).

4. Respondent Honorable Jill Matthews is the court-appointed Magistrate for this case. Both Respondents are referred to collectively below as “The Juvenile Court”.

5. The third respondent, Amy C. Stone, is an Assistant Disciplinary Counsel under the Office of Disciplinary Counsel for the Supreme Court of Ohio (“ODC”).

² Under Juv.R. 37, Juv.R. 32(C) and Loc.R. 1(A) of the Court of Common Pleas of Franklin County, Juvenile Branch, all records and proceedings are confidential. Therefore, all supporting documentation from the case and Exhibits are filed under seal.

JURISDICTION AND VENUE

6. The Supreme Court of Ohio has original jurisdiction to issue extraordinary writs of prohibition and mandamus to lower courts, a specific judge or court officer, and state government officials, under Article IV, Section 2(B)(1), and also authorized by R.C. 2731.02.

FACTS GIVING RISE TO RELATORS' CLAIMS FOR RELIEF

Preliminary Statement

7. This case arises from (a) the inaction of all Respondents in regards to (a1) the willful misconduct, performance unauthorized by federal and state law and acts committed with actual malice by the Guardian Ad Litem (the "GAL" or "Attorney-GAL") appointed to represent the interests of the Child, (a2) her intentional interference and impact on Relators' lives, parenting rights and parenting time between relators, and (a3) other duties prescribed by law (b) Relator A.J.'s counter-efforts to maintain his rights, look after the infant child, and ultimately, to exercise his first amendment rights—specifically the ability to make a complaint to, or seek the assistance of, one's government, without fear of punishment or reprisals. (c) This case is also the result of multiple constitutional claims against Respondent the Juvenile Court, as it exceeds its jurisdiction and is exercising judicial power that is unauthorized by law.

Background

8. As the backdrop to this case is the case of two unmarried parents, Relator A.J. and his now 2-year-old son's mother, who had been equally involved and committed to their unborn child since the day they learned about his conception. By the time the infant child was 4 months old, Relator A.J.' commitment to the child had not changed but the (still) unmarried

mother filed for full custody as the result of the deterioration of the relationship between them as well as a disagreement regarding health and safety concerns about the child.

9. For the first 5 months of litigation in juvenile court, Relator A.J.'s legal dispute was just an ordinary custody case with its share of conflict but still below average as compared to many other custody cases. Despite their disagreements and problems, both parents generally maintained varying degrees of cooperation and communication while exercising equal parenting rights that had been granted by The Juvenile Court during the very first hearing in the case.

10. But one event changed it all: A prominent, influential and licensed family law attorney was appointed as the GAL for the infant child about 5 months after the inception of the child custody case—whose appointment by the Juvenile Court was prompted specifically by the unresolved disagreement between the parents regarding health-related concerns about the child. Almost immediately, the GAL's covert aggression and harmful misconduct, driven by conscious bias, took a toll for Relators and for the entire custody case. Soon after, the GAL's prejudice and passionate advocacy for the child's mother became obvious to the naked eye as she purposely sparked discord between the parents³ and even between the parties' counsel, all while instituting any possible option to interfere with Relator A.J.'s parenting time and rights. It did not take long before the custody dispute became a high conflict case, now to a point of no return.

11. The well-documented deceptive habits, sustained harassment and other unconscionable conduct engaged by the GAL cost Relator A.J. a trip to the emergency room, has

³ Refer to Memorandum in Support of Verified Complaint; Refer to Affidavit of Relator Aristides Jurado; See Exhibits E1, E2, E3 and E4.

affected the welfare of the child, and also resulted in the involvement of multiple government agencies investigating complaints against the child's daycare provider⁴.

12. Since May of 2013, Relator A.J. has been seeking help from the community, from members of the local bar, and from local authorities to address the GAL's wrongdoings without success. The general consensus among family law attorneys interviewed was that the process for removing a GAL simply doesn't work in Ohio, and this one in particular would be a waste of time, given her influence with the courts. With such feedback, Relator A.J. contacted the Children and Families Section of the Supreme Court of Ohio and reached out to the Attorney General's office with no results.

Respondent ODC dismissed grievance alleging limitations of their authority

13. After 9 months of experiencing a steady increase in hostility and pervasive harassment while being the target of deceptive conduct, Relator A.J., in his own behalf and in Relator N.G.'s behalf, filed a formal grievance against the GAL-Attorney with Respondent ODC⁵, which was delivered in person on January 6⁶, 2014. The filing included (a) the standard grievance form completed and signed, (b) a 10-page supplementary statement of facts document, and (c) electronic media containing evidence including 400+ pages of exhibits and at least half-dozen audio and video recordings.

⁴ Refer to Memorandum in Support of Verified Complaint and Affidavit of Relator Aristides Jurado; Also see Exhibit A3 – "2013-09-06_Short_Transcript" and Exhibit M – DVD, 1st video "2013-09-06_B.____Meeting_MrJurado_MsL.C.____(Short-Version)_Redacted.mp4"

⁵ See Exhibit H1 – Filed Grievance

⁶ See Exhibit H1 page 5 - Receipt of Filing

14. After Relator A.J. inquiries at the time of the filing, ODC confirmed that the filing could be amended at a later time; and until the Custody Case was over, an investigation could not start. Relator A.J. shared his ease given his concerns of retaliation by the GAL.

15. Unexpectedly on March 3, 2014, ODC issued a determination letter communicating the dismissal of the grievance against the GAL due to limitations of their authority while asserting that

“Concerns with the conduct of a Guardian ad Litem should be raised to the court that appointed him or her. * * * The court will take whatever action it deems is appropriate, and is obligated by the Code to report any disciplinary rule violations to this office.”⁷

16. Two days later, The Honorable Gina Palmer, Administrative Magistrate of the Juvenile Court, described to Relator A.J. what he already knew: the local rule for the oversight of Guardians Ad Litem, including the process of accepting and reviewing comments and complaints regarding a GAL’s performance, exists for the exclusive purpose of keeping or removing a GAL from the appointment list. Understandably, Magistrate Palmer stated that she is not Disciplinary Counsel and that the scope of her duties does not permit any impact to the ongoing case⁸.

⁷ See Exhibit H2 – ODC Determination Letter

⁸ See Exhibit H3 – Email communication with Administrative Magistrate

Undue Hardship and Excessive Child Support Obligation while Juvenile Court disinclined to hear and adjudicate Pending Motion to reduce Child Support

17. While the GAL has been running amok out of the courtroom, the Juvenile Court has been allowing an unreasonable child support obligation to be imposed upon Relator A.J. for the past 12 months or more. In addition to the \$750+ per month in daycare tuition that Relator A.J. incurs due to the GAL's imposed mandatory attendance for the child, his current monthly child support obligation is in excess of \$1,300/month⁹, an amount that is automatically deducted from his paycheck as a garnishment by his employer, along with additional benefits/insurance premium deductions totaling \$700+ that includes coverage for the child and about \$3,500.00 in taxes. The net amount left after all these deductions are taken is not enough to cover Relator A.J.'s regular monthly bills, let alone any extraordinary expenses.

18. This child support obligation becomes more concerning considering (a) that the mother of the child as the recipient of these payments holds a Director-level position for a Columbus-based international Retailer, with a total yearly compensation package estimated to be a minimum of \$150k~\$200k, and substantially higher than Relator A.J.'s income; (b) the fact that both parents have a 50/50 equally divided parenting schedule which results in equal incurring of child-related expenses.

19. Under these circumstances, having Relator A.J.'s pay any child support amount is questionable, let alone such significantly high recurring obligation. Even while involuntarily unemployed during the second half of 2013, Relator A..J. was required to pay the full child support amount and forced to incur in daycare tuition, all while having no source of income—

⁹ See Exhibit I2 – Latest CSEA Order

resulting in the accumulation of high credit cards balances and even going over their limit, overdrafted bank accounts, etc. Incurring in daycare tuition while involuntarily unemployed was the direct result of the GAL's imposed recommendation which ultimately became an agreed court order after sustained duress: The child must attend a daycare facility every weekday with no exceptions, even when Relator A.J. was unemployed, willing, available and able to care for his child on his court-approved parenting weekdays.

20. Both the GAL and mother of the child have adamantly opposed and successfully precluded Relator A.J.'s parents from caring for their grandson, even on parenting days assigned to Relator A.J. Their efforts have effectively deprived Relator N.G. from building a stronger bond with his loving grandparents who have also been completely committed to him since gestation. As a result, Relator A.J. continues to incur in unnecessary child care expenses that could be provided by his extended family for free, just because the child's mother prefers to keep the child from Relator A.J.'s family. The court has already declined to address the issue in several occasions.

21. In October 2013, Relator A.J.'s counsel filed a Motion to Modify Child Support that, until this day, remains pending¹⁰. Respondent the Juvenile Court have been reluctant to hear the motion.

22. As if the financial and other types of harm inflicted upon Relator A.J. by her unlawful performance as an officer of the court was not enough, the GAL and child's mother instigated a

¹⁰ Refer to Exhibit I1 – Motion for Modification of Child Support

collateral civil lawsuit against Relator A.J. in September and October 2013 that is currently pending and running in parallel with the custody case¹¹.

23. Since then, Relator A.J. has been forced to rely on family and friends to make ends meet, while accumulating high levels of debt.

Started Pattern of Procedural irregularities by Respondent the Juvenile Court

24. During the first 15 month of the case, all court proceedings in the custody case were presided by the Magistrate. On December 13, 2013 and for the first time, the case made it to Judge Jamison's docket due to an Emergency Ex-Parte Motion for Restraining Order—filed by the child's mother, her counsel and endorsed by the GAL—to prevent Relator A.J. from placing the child on a second daycare facility on his parenting days. Relator A.J. did intend to do so for compelling reasons that were later accepted by the court. At the ex-parte hearing, the Juvenile Court granted the Restraining Order—even when it was evident that the child was not in any imminent danger and a multitude of procedural issues arose. For example, (a) there was no notice to the counsel of record representing Relator A.J. at the time, (b) No service of pleadings were issued or Certificate of Service included, (c) the GAL was well aware that Relator A.J.'s attorney was on his way to New York for a one-day trip¹² on that same day and the circumstances would have allowed the Ex-Parte Hearing to occur the following Monday without posing any risks for the child, (d) No logic or reason existed to support the notion that a given daycare placement for a child's out-of-home care should be considered an emergency,

¹¹ Refer to Memorandum in Support of Verified Complaint and Affidavit of Relator Aristides Jurado; Also see Exhibits C1-C6, D6, D7 and Exhibit M – DVD, 2nd video “2013-10-08_Nationwide_ER_Referral_to_FCCS - Part II.mp4”

¹² Refer to Exhibit F2 – Email Communication between GAL and Counsel.

especially if it is a state-licensed facility, (e) No review hearing was set or scheduled as court rules require¹³. When the procedural issues were brought up to the attention of the court, the issues were all acknowledged¹⁴.

25. On December 20, 2014, a follow-up review hearing was conducted as the result of the action taken by Relator A.J.'s attorney. During the full oral evidentiary hearing that lasted 2 hours, all the parties had the opportunity to be heard, except for Relator A.J. The GAL even took the stand twice. When Relator A.J.'s attorney requested the court for his client to take the stand, the court went into a recess intended to be short but it instead turned into weeks¹⁵. For the convenience of opposing counsel, the hearing was continued to January 8, 2014.

Dismissal of Action Unauthorized by Law

26. On January 7, 2014 and within hours of the upcoming hearing, opposing counsel filed a Notice of Voluntary Dismissal, with a reference to Ohio Civil Rule 41(A), to withdraw their Ex-Parte Motion for Restraining Order to prevent Relator A.J. from taking the stand and to avert the court from making an unfavorable ruling for the Plaintiff-Petitioner in the custody case. Even when the Rules of Procedure do not allow an action to be voluntarily dismissed after the trial begins without agreements by all parties or explicit approval by the court, the court allowed the motion to be dismissed without prejudice, and without reason or agreement between all parties. Most importantly, Relator A.J. was unable to disprove inaccuracies and unsubstantiated accusations made by the GAL during the 12/20/2013 court proceeding, as part of her deceptive tactics and efforts to mislead the court and prejudice Relator A.J.

¹³ Refer to Exhibit F1 pages 5-8 – Official court transcripts of 12/20/14 proceedings

¹⁴ Refer to Exhibit F1 pages 11-12 – Official court transcripts of 12/20/14 proceedings

¹⁵ See Exhibit F1 pages 102-105 – Official court transcripts of 12/20/13 proceedings

Relator A.J.'s Involuntary Dismissal of Counsel followed By Motions for Sanctions and Charges of Contempt

27. Soon after, A.J.'s precarious financial situation forced him to dismiss his attorney, after accumulating a substantial balance of unpaid attorney fees and unable to pay even a partial trial retainer fee.

28. Without any legal training and struggling to keep up with the time demands of litigation, A.J. quickly became out of compliance with case management orders and other court requirements typically left to licensed attorneys, and even fell behind with payments for GAL fees—all resulting in multiple motions filed by the GAL and opposing counsel for contempt and sanctions, including precluding or limiting introduction of evidence by A.J.

Immediate Sanctions by Respondent, while Skeptical of Motions to Remove GAL and Reluctant to Hear

29. Once Pro Se, A.J. made two attempts to remove the GAL from the custody case, as provided by Sup. R. 48 and Loc. Juv. R. 27. On the same day that opposing counsel filed the Motions for Contempt and Sanctions, Relator A.J. filed the first Motion for Emergency Removal of GAL¹⁶, which appeared not to be well-taken by the court without proper adjudication or consideration of all relevant facts: On January 22, 2014, while conducting an emergency hearing to address a second Motion for Emergency Custody¹⁷ concurrently filed by Relator A.J. in which opposing counsel and GAL were present, Judge Jamison learned that he had a past due balance with the GAL and ordered A.J. to (a) resume payments to the GAL, (b) make payment

¹⁶ Refer to Exhibit J3 – Motion for Emergency Removal of GAL

¹⁷ Refer to Exhibit J1 – Motion for Emergency Custody

arrangements to reimburse the other party (custody petitioner) for half of the cost of a custody evaluation, and (c) prohibited A.J. from scheduling any hearings in her calendar for the next 30 days or until the end of February, including the Emergency Motion for Removal of GAL that had just been presented to her, as well as an Ex-Parte Emergency Motion for Restraining Order¹⁸ against Petitioner also filed on the same day.

30. During this Emergency Hearing¹⁹, the issue of the daycare restrictions was brought up. When the court reminded A.J. that he had agreed to it and signed the agreed order, he asserted that his agreement was a result of duress²⁰—a claim the court simply ignored.

31. Also as a result, the 2nd and 3rd emergency Motions lingered for an excessive period of time after January 22, 2014; and the proceeding to hear A.J.'s first motion—for Emergency Custody—was cut short leaving A.J. without the opportunity to present all of his claims²¹. Although A.J.'s first motion was denied, Judge Jamison filed an Entry the next day with rulings and court opinions that were fair²² and focused on the best interest of the child—but only addressed the limited information and claims A.J. had a chance to present. The one constant exception was any and all matters related to the GAL, as well as the claims left out after the hearing was cut short.

32. On February 12, 2014, A.J. filed his second Emergency Motion for Removal of the GAL²³. This time, the motion was complemented by a second concurrently filed Motion to

¹⁸ Refer to Exhibit J2 – Emergency Motion for Restraining Order

¹⁹ Refer to Exhibit J4 – Official court transcripts of 01/22/14 proceedings

²⁰ See Exhibit J4 pages 18-19 – Official court transcripts of 01/22/14 proceedings

²¹ See Exhibit J4 page 21 – Official court transcripts of 01/22/14 proceedings

²² Refer to Exhibit J5 – 01/23/2014 Court Entry by Judge Jamison

²³ Refer to Exhibit K3 – Motion for Emergency Removal of GAL filed on 2/18/2014

Expedite Hearing without Referring²⁴ for Removal of GAL. Both Motions included explicit requests for an oral hearing²⁵, while the latter focused on arguments against referring the matter to the Magistrate and to expedite consideration and hearing. The one reason not included in the motion, but obvious to those familiar with this court, is that Magistrate Matthews favors hearings by affidavits, with very few exceptions. Also, a third Motion for Protective Order was filed, along with the other two motions, to safeguard any and all court records and identity of the minor child in this juvenile case²⁶. All three motions were set to be heard on March 13²⁷.

33. In preparation for the March 13, 2014 hearing, Relator A.J. subpoenaed the entire GAL file to be produced at the hearing²⁸. Not without resistance, the GAL still agreed to bring the entire file to court for the upcoming hearing²⁹. Upon commencement of the hearing, the court allowed opposing counsel to start addressing the court before the movant party, a practice against court tradition and rules. After opposing counsel completed his uninterrupted dissertation—as the Judge duly described it³⁰— A.J. was again denied the opportunity to be heard. With the few words uttered in between the frequent interruptions, A.J. conveyed the court that he had paid a substantial amount to the GAL since the January 22 hearing. Although A.J. was not given the chance to share more details, he had actually made five payments

²⁴ Refer to Exhibit K4 – Motion to Expedite Hearing without Referring, for Removal of GAL filed on 2/18/2014

²⁵ See Exhibit K3 page 8 and Exhibit K4 page 1

²⁶ Refer to Exhibit K5 – Instant Motion for Protective Order

²⁷ See Exhibit K5 pages 53 and 54

²⁸ Refer to Exhibit L1 – Subpoena to produce GAL file

²⁹ Refer to Exhibit L2 – Email Communications with GAL

³⁰ See Exhibit K1, page 6 – Official court transcripts of 03/13/14 proceedings

totaling \$2,300.00 in less than two months³¹--during the same time period when he was unable to fill up his gas tank or fully load his groceries shopping cart—a substantial sacrifice made just to comply with the 1/23/2014 Order issued by the court. Yet, the court found A.J. non-compliant for not paying in full the balance of unpaid GAL's fees³², an opinion inconsistent with the most recent order issued by the Judge³³ in the Entry filed on January 23. As a result, Respondent Judge Jamison did not allow the proceedings to go on, and as a penalty to Respondent A.J., the hearing was continued to a later date³⁴—to the same date that the final trial was scheduled to start. It is important to note that Judge Jamison asserted that the GAL "has investigated every one of your complaints. * * * She has done what this Court charged her to do."³⁵ That opinion or conclusion was reached by the Juvenile Court, before holding a hearing on the issue of the GAL or without considering all relevant facts. The only information the Judge was acquainted with in terms of the GAL's performance could only have been from the testimony given at the December 20, 2013 court proceedings.

Not Entitled to Discovery of GAL File and Further Constrained by Additional Disbursements Imposed by Respondent's Decision to Hear by Affidavits

34. At the start of the final hearing and trial set for March 26, 2013, the Magistrate acknowledged that there were too many pre-trial motions and issues pending that needed to be resolved before the trial and set a new date for most pending motions to be heard by

³¹ Refer to Exhibit K2 – Statements for Professional Services, including payments made

³² See Exhibit K1, page 6

³³ See Exhibit J5 page 3

³⁴ See Exhibit K1, page 11

³⁵ See Exhibit K1, page 7

affidavits, including A.J.'s motions that had been continued by the Judge and turned up in the Magistrate's docket without an order of reference.

35. The following week Respondent A.J. approached Clerk of Court's supervisor to inquire and coordinate the most appropriate method for filing a binder with over 900 pages of exhibits. After the careful consideration of multiple options, including the electronic filing of the exhibits broken down in multiple files, the Clerk's supervisor agreed to accept the binder intact and to stamp page-by-page, while preserving the binder's presentation (dividers, etc.) On the same day, Respondent approached the court through the Duty Magistrate, which on that date was Honorable William Sieloff, and obtained an affirmative answer to the question of whether the court would accept one combined Affidavit for all pending motions.

36. Lastly, when A.J. learned the procedural details of filing affidavits for the adjudication of motions, he brought to the court's attention that he was entitled to the discovery of the GAL file and had lost that opportunity at the March 13 hearing since the GAL had produced the file. He also brought up the issue that he could not afford the cost of the filing, because it required included multiple copies of the affidavit and exhibits—which at the time exceeded several hundred pages. For both issues, the court stated that they could not help Relator A.J., and reminded him that filing only one copy with the Clerk's office was against the rules and would disqualify the affidavit.

37. Clearly, A.J. had all the intentions to file the Affidavits due on April 9, 2014, and would have met the deadline if he would have been able to afford the cost of the multiple copies or allowed to submit only one copy.

38. On April 9, 2014, when the Affidavits were due, Relator A.J. filed instead a Motion to Stay based on his intentions of filing this Original Action in this court, but was eventually denied.

39. During the last appearance in front of the Magistrate on May 12, 2014, A.J. re-stated his reasons for not filing Affidavits and confirmed that he still intended to file this Original Action in this court. On the June 13, 2014 Entry filed by the Magistrate, the Court admonished A.J. for filing his Motion to Stay Proceedings based on the filing of this Original Action in this court that had not yet happened—a delay caused mainly due to Respondent’s inability to raised funds quickly enough to cover the costs of the filing, which requires over a dozen copies of all documents and exhibits, multiple copies of electronic media, binding of exhibits to name a few. The Magistrate also denied all pending Motions filed by A.J. Relator A.J. as well as the opposing party filed separate Motions to Set Aside Magistrate’s Order³⁶ and are currently pending.

40. Fifteen months after her initial appointment by the Juvenile Court, the GAL is still active in her role and continues her misconduct and fierce advocacy for the mother’s interest.

JUSTIFICATION FOR EXTRAORDINARY WRIT OF MANDAMUS

41. Relators incorporate by reference paragraphs 1-40 as if rewritten herein

³⁶ Refer to Exhibit L4 – Motion to Set Aside Magistrate’s Order

Respondent ODC has a Clear Legal Duty

42. Supreme Court Rules for the Government of the Bar, Rule V, Section 4, Division (C) explicitly states, in its title, Respondent ODC's "Power and Duty to Investigate;" Gov.Bar R. V(4)(C). Division (C)(1) of that same section mandates that,

The investigation of grievances involving alleged misconduct by justices, judges, and attorneys and grievances with regard to mental illness *shall* be conducted by the Disciplinary Counsel or a certified grievance committee. The Disciplinary Counsel and a certified grievance committee *shall* review and may investigate any matter filed with it or that comes to its attention and may file a complaint pursuant to this rule in cases where it finds probable cause to believe that misconduct has occurred or that a condition of mental illness exists.

(Emphasis Added.) Gov.Bar R. V(4)(C)(1).

43. Furthermore, the rule's text stops short of making the investigation of grievances an absolute obligation of Respondent ODC only by the one condition stipulated in another subdivision of that section. Rules for the Government of the Bar, Rule V, Section 4, Division (C) (2) of that same section provides the one and only condition that,

A grievance may be dismissed without investigation if the grievance and any supporting material do not contain an allegation of misconduct or mental illness on the part of a justice, judge, or attorney. A certified grievance committee shall not dismiss a grievance without investigation unless bar counsel has reviewed the grievance.

(Emphasis Added.) Gov.Bar R. V(4)(C)(1). As such, Respondent ODC has a clear legal duty to investigate Relator A.J.'s grievance against the attorney-GAL.

Relators have a Legal Right to Relief from the Duty ODC Failed to Perform

44. Relators' grievance against the GAL specified "In ethical and other violations of Ohio Rules of Professional Conduct for Attorneys as described in the following sections". Also, under

section 4 of the grievance, it stated “Deceptive Conduct and Misleading the Court”. The supplementary Statement of Facts document included in the filing also includes several specific allegations of misconduct. Because these allegations are for violations of specific rules that governs the conduct of attorneys, it fell under the jurisdiction of ODC.

45. There is no legal requirement for the grievance to cite the specific rule number that the allegation relies upon. In fact, Gov.Bar R. V(4)(C)(1) states that the ODC shall review any matter “that comes to its attention”, indicating that even a proper grievance should not be a requirement for an investigation.

46. The allegation of the GAL’s bias, as stated in Relators grievance and supporting documentation, is a violation of Prof.Cond.R. 8.4(g).

47. The allegation of deceptive conduct by the GAL, as stated in the grievance and supporting documentation, is a violation of Prof.Cond.R. 8.4(b) and (c).

48. The allegation of “Misleading the Court”, as stated in the grievance and supporting documentation, is a violation of Prof.Cond.R. 3.4(b) and (e).

49. Gov.Bar R. V does not have any exclusions for an attorney acting as Guardian Ad Litem nor prevents an aggrieved party from filing a grievance against a GAL with the ODC per duties set under Gov.Bar R. V(4)(C)(1), and in parallel with a complaint filed with the court that appointed the GAL as per Sup. R. 48(G)(9).

50. Confirming the purpose of Sup. R. 48(G)(9), The Honorable Gina Palmer, Administrative Magistrate of the Division of Domestic Relations and Juvenile Branch of the Common Pleas Court of Franklin County, described the purpose of the local rule for the oversight of Guardians Ad Litem on March 5, 2014: “The process of received and reviewing

comments and complaints regarding a GAL's performance is only for the purpose of keeping or removing the GAL from the appointment list".

51. Because the Ohio Constitution vests in the Supreme Court of Ohio the ultimate authority to regulate the profession in order to protect the general public and litigants while enforcing the obligations of the legal profession, it is the legal right of Relators—as aggrieved individuals with a substantial interest—to request relief for the acts not performed by Respondent ODC.

Respondent the Juvenile Court has a Clear Legal Duty to comply with, and enforce local court rules and court rules prescribed by the Supreme Court of Ohio to secure the fair, impartial and speedy resolution of cases, and ultimately protect the rights of litigants

52. Respondent the Juvenile Court has the duty to enforce Ohio Civil Rule 41(A) that regulates voluntary dismissal of actions. The rule stipulates that the only option for a plaintiff to dismiss a case without approval of the court and without approval from any adverse party is by simply "filing a written notice of dismissal *before* the trial begins" (Emphasis Added.) Civ.R. 41(A)(1)(a).

53. Respondent the Juvenile Court has the duty to comply and enforce Ohio Civil Rule 60(B) that provides a party with Relief from Judgment or Order in cases of, for example, misrepresentation, misconduct, duress or "any other reason justifying relief from the judgment." Civ.R. 60(B).

54. Respondent the Juvenile Court has the duty to comply with and enforce its Local Juvenile Rule 27, and Sup. R. 48 of the Supreme Court of Ohio that govern the Role, Duties and

Responsibilities of Guardians Ad Litem, as well as provisions for their oversight by the court, such as Loc.R. 27(L)(2) that provides the mechanism for removing a GAL from a case.

55. Respondent the Juvenile Court has the duty to comply with its Local Juvenile Rule 8, and Civ.R. 53 and Juv.R. 40 that provides that a party may file a motion to set aside a Magistrate's Order, "which shall be heard by a judge." Loc.Juv.R. 8.

56. Even when Rules of Superintendence do not create rights in the litigants, such rights may arise otherwise as an indirect consequence of a court's failure to comply with such rules. See *State ex. rel. Newman v. Gretick*, 155 Ohio App.3d 696, 2004-Ohio-222, at ¶15.

57. Every litigant has fundamental right of due process. The GAL's misconduct and conscious bias, conspiracy against A.J.'s rights and other unlawful acts being committed has deprived and continues to deprive Relator A.J. of due process. "When a Guardian Ad Litem's bias, actions and inactions taint the custody proceeding, a parent is effectively denied due process". *Patel v. Patel*, 347 S.C. 281, 286-287, 555 S.E.2d 386, 389 (S.C. App. 2001); *Kelley v. Kelley*, 175 P. 3d 400, 407-408, 2007 OK 100 (2007).

Respondent the Juvenile Court has a Clear Legal Duty to prevent a Parent's financial status from creating prejudice and not hinder Relator A.J. during proceedings for allocation of Parental Rights.

58. Division (F)(3) under section 3109.04 of the Ohio Revised Code instructs the courts as follows,

When allocating parental rights and responsibilities for the care of children, the court shall not give preference to a parent because of that parent's financial status or condition.

R.C. 3109.04(F)(3). Because the allocation of parental rights is not a single event, but instead a series of proceedings in and out of the courtroom, with close oversight by the court, respondent the Juvenile Court has a duty to ensure that a parent's financial condition, whether is temporary or permanent, does not become a disadvantage under any aspect of the case, including the adjudication of pre-trial motions, allocation of GAL fees, evaluation fees, etc.

59. Given that Respondent the Juvenile Court has allocated all litigation expenses, such as GAL fees, equally between the parents without considering all the facts or AJ's ability to meet those obligations, it has failed to comply with R.C. 3109.04(F)(3). This failure to protect Relators statutory right becomes more significant when the Juvenile Court proceeds to penalize A.J. instantly without a hearing or proper consideration of all the facts that led to A.J.'s failure to meet his financial obligation with the GAL.

60. Relator AJ has a clear right to request relief when the Juvenile Court does not comply in regard to a statutory substantial right.

Respondent the Juvenile Court has a Clear Legal Duty to Protect Records of Court Proceeding and maintain the Confidentiality of Minors

61. Pursuant to R.C. 2301.03, The Domestic Division, Juvenile Branch of Franklin County Common Pleas Court has exclusive jurisdiction of the custody case. Specifically, Division (A) of R.C. 2301.03 provides that,

In Franklin county, the judges of the court of common pleas whose terms begin on January 1, 1953, January 2, 1953, January 5, 1969, January 5, 1977, and January 2, 1997, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common

pleas of Franklin county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to juvenile courts, and all cases under Chapters 2151. and 2152. of the Revised Code, all parentage proceedings under Chapter 3111. of the Revised Code over which the juvenile court has jurisdiction, and all divorce, dissolution of marriage, legal separation, and annulment cases shall be assigned to them. In addition to the judge's regular duties, the judge who is senior in point of service shall serve on the children services board and the county advisory board and shall be the administrator of the domestic relations division and its subdivisions and departments.

(Emphasis Added.) R.C. 2301.03(A). Furthermore, Divisions 32(C) and 32(D) of the Ohio Rules of Juvenile Procedure and Loc.R. 1(A) of the Court of Commons Pleas of Franklin County, Juvenile Branch contain provisions for the confidentiality of records and the investigation that may be made during the allocation of parental rights and responsibilities for the care of the children. For example, Juv.R. 32(D) mandates that:

The report of the investigation shall be confidential, but shall be made available to the parties or their counsel upon written request not less than three days before hearing. The court may tax as costs all or any part of the expenses of each investigation.

(Emphasis Added.) Juv.R. 32(D). Therefore, it is the legal duty of Respondent the Juvenile Court, in their plenary and exclusive jurisdiction over custody cases, to protect the confidentiality of the case records and identity of the minor.

62. Relators AJ and NG have a clear right to request relief when the Juvenile Court does not comply in regard to a statutory substantial right.

Respondent the Juvenile Court has a Clear Legal Duty to Protect the Best Interest of the Child, including Relator N.G.'s health, safety and welfare.

63. The state as a parent doctrine provides that “the state is the ultimate parent of children within the care of juvenile court.” *In re Julie Anne*, 121 Ohio Misc.2d, 2002-Ohio-4489, at ¶54. Under this doctrine, “the state has a duty of the highest order to protect the child”. *Id.* at ¶55,

64. R.C. 3109.04(F) (1) sets the “Best Interest of the Child” mandatory standard. “In crystal-clear language, the statute directs that ‘the court shall consider all relevant factors’ and ‘physical health factors’ in determining the ‘best interest of the child’ in visitation and custody matters.” (Emphasis Sic.) *Id.* at ¶57.

65. Referring to the provisions under R.C. 3109.04(C) in *Sheridan v. Sheridan*, 2005-Ohio-6007, The Sixth District Court of Appeals asserted that the “*safety and welfare of a child* is certainly relevant to the best interest determination.” (Emphasis Added.) *Sheridan v. Sheridan*, 2005-Ohio-6007, at ¶28.

66. The Juvenile Court failed to protect the best interest of Relator N.G., including his health, safety and welfare when the court cut short the Emergency Custody hearing on January 22, 2014 and deprived AJ the opportunity to be heard in regard to additional allegations; and by wrongly denying the Motion for Emergency Custody based on the courts assertion that Relator A.J. “already has custody”, incorrectly implying mootness³⁷.

67. The Juvenile Court has failed and continues to fail to protect the Best Interest of the Child when it denies to hear Relator AJ’s Motion for Removal of GAL, his Motion to Expedite

³⁷ See Exhibit J4 page 22.– Official transcript of 1-22-14 Court Proceeding,

(Oral) Hearing, and his request to not refer the matter to a referee or magistrate. If the GAL is truly only focused on advocating only and foremost for the interest of the Mother-Petitioner, and all the allegations are found to be true, then Respondent the Juvenile Court have been failing and continue to fail to protect the Best Interest of the Child.

68. Relators AJ and NG have a clear right to request relief when the Juvenile Court does not comply in regard to a fundamental and statutory substantial right.

Relators Have No Adequate Remedy at Law

69. Relators continue to be aggrieved by the GAL and, without a Writ of Mandamus to compel ODC to investigate the allegations contained in the grievance, no disciplinary process or action will ever be taken against the GAL-Attorney. Gov.Bar R. V(4)(1)(4) regarding Notice of intent not to File states that the written notice shall advise the grievant of the right to have the “determination reviewed pursuant to division (1)(5) of this section and the steps to obtain such review”. Supreme Court Rules for the Government of the Bar, Rule V, Section 4, Division (1)(4). The determination letter dated March 3, 2014 failed to advise Relator A.J. of such right and excluded any information about division (1)(5) of the Rule. Admittedly, the rule is explicit about written notice provided by “a certified grievance committee” without mention of notices provided directly by the ODC. As a result, there is no plain and adequate remedy in the ordinary course of the law and harm will continue to be inflicted upon Respondents indefinitely without the possibility for any relief, equitable or otherwise.

70. Without a Writ of Mandamus to compel Respondent the Juvenile Court to investigate, consider all relevant facts, and hear the Motion for Removal of the GAL as

prescribed by court rules, both Relators will continue to suffer irreparable harm that will not be remedied with an appeal, which may take a few years. For example,

a. For the first 2 years of his life, Relator N.G. has spent half or more of all of his waking hours under parental care substitutes in institutional daycare facilities—and this will continue several more years if we rely on the remedy of an appeal. For the early years, the parent-child relationship is paramount for the future development of the child.

b. For the first two years of his life, N.G. experienced various easily-preventable health issues that, although no life threatening, may affect his normal development during the early crucial years—and this will continue several more years if we rely on the remedy of an appeal.

c. For more than 15 months, Relator A.J. has been deprived of his constitutional rights by the GAL with full intent and malice. If the harm continues for any longer time, it will put Relator A.J. in an irreparable situation that in which an Appeal or any legal action will not even be possible.

d. Considering that guardians ad litem enjoy quasi-judicial immunity and that GAL fees are not dischargeable nor refundable, Relator may not have any adequate remedies available in the course of the law in the future if the status-quo is maintained any longer than absolutely necessary.

71. Without a Writ of Mandamus to compel Respondent the Juvenile Court to perform its duties as prescribed by court rules and law, denies Relators of substantial rights that by case law, are remedied with a Writ of Mandamus.

JUSTIFICATION FOR EXTRAORDINARY WRIT OF PROHIBITION

72. Relators incorporate by reference paragraphs 1-71 as if rewritten herein.

73. Relator A.J. has been summoned by Respondent the Juvenile Court to appear on July 22, 2014 to face multiple charges of contempt. The final trial of the case is also scheduled to start on that week, in which examination of witnesses, presentation of evidence and other activities to be expected in a full evidentiary hearing will take place. As a result of the unfairness of past proceedings, deprivation of substantial rights by the court, and the conspiring of the GAL against Relator AJ's rights, AJ will not have legal representation by a licensed attorney. In fact, the Juvenile Court has already denied his Motion for Leave to retain Stand-By Counsel. How fair can the proceedings be with one party as Pro Se will be facing 3 experienced opponents in court? Besides the two attorneys retained by the child's mother, it has been well established that the GAL advocates for the mother with more passion than the mother's own legal counsel. In conclusion, A.J. has not been offered Equal Protection of the law, and has been deprived of the most fundamental of rights as Respondent the Juvenile Court precluded him multiple times from having the opportunity to be heard, and allowed the interference of his parental time and rights as protected by the Constitution.

74. With most certainty, Respondent the Juvenile Court is about to exercise judicial power in the upcoming trial and hearing to show cause related to the charges of contempt.

75. The exercise of their judicial power exceeds their jurisdiction and is not authorized by law as it infringes A.J.'s fundamental and constitutional rights.

76. When a party in a custody case is deprived of substantive or procedural due process, an Appeal is not and Adequate Remedy at Law. “The Due Process clause safeguards against state infringement of a parent’s fundamental right through procedural and substantive guarantees * * * The procedural guarantees ensures a parent the right to fundamentally fair procedures before the state may infringe on the right.” *In re M.H.*, 2011-Ohio-5140, at ¶150, citing *Troxel v. Granville* (2000), 530 U.S. 57, 65-66 120 S. Ct. 2054 and *In re S.B.*, 183 Ohio App.3d 300, 916 N.E.2d 1110, 2009-Ohio-3619, at ¶129.

77. “The substantive component of Due Process clause ‘provides heightened protection against government interference’ with any fundamental right * * * Statutes that authorize infringement upon a fundamental right must be “narrowly tailored” to achieve a compelling state interest.” *Id.*, at ¶151, citing *Washington v. Glucksberg* (1997), 521 U.S. 702, 117 S. Ct. 2258, and *Reno v. Flores* (1993), 507 U.S. 292, 301-02, 113 S.Ct. 1439.

ANCILLARY RELIEF REQUESTED

78. Relators incorporate by reference paragraphs 1-77 as if rewritten herein.

79. Unless restrained or enjoined by an Order to Stay Proceedings or other temporary injunctive relief, Respondent the Juvenile Court will move forward with the exercising of their Judicial power that is unauthorized by law while exceeding their jurisdiction on July 22, when Relator A.J. will be facing multiple charges of contempt without legal representation and with three adversary attorneys advocating passionately against him.

80. This court needs to enjoin the Juvenile Court to prevent it (a) from starting trial on July 22 while limiting A.J. with introduction of evidence, allowing opposing counsel and

Attorney-GAL to examine A.J. and his adverse witnesses without being able to make qualified objections before improper or prejudicial questions are answered; (b) from starting trial without addressing pre-requisites mandated by law, such as the removal of the GAL, the proper allocation of fees and child support obligations that would allow Relator A.J. to retain legal counsel again, and to complete pre-trial actions that their dismissal was not authorized by law,

81. Without temporary injunctive relief, Respondent the Juvenile Court will allow health concerns related to the child to linger indefinitely, as it has occurred for the past 18 months.

82. Relators do not have adequate remedy at law to prevent the GAL from ongoing continuous unlawful acts, from sustained harassment and from interference with rights. Equal protection of the law requires ancillary injunctive relief pending adjudication of the merits of these claims.

CONCLUSION AND PRAYER

Therefore, Relators pray that this Court:

- A. Issue a writ of mandamus compelling Respondent ODC to investigate the grievance filed Relators against the Attorney-GAL.
- B. Issue a writ of mandamus compelling Respondent the Juvenile Court to properly hear and adjudicate all-pretrial pending motions and to vacate improperly adjudicated ones, invalid orders and existing provisions in agreed orders that were reached under duress or any other proven misconduct, especially the provision that substitutes parental care with non-parental care for 40 hours each week and interferes with the fundamental rights of a parent.

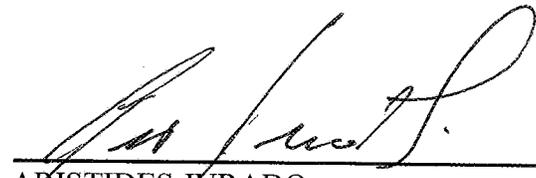
- C. Issue a writ of mandamus or alternative writ requiring Respondent the Juvenile Court to address all financial matters in equitable manner and on a temporary basis during the pendency of this case and until final adjudication of the custody case.
- D. Issue a writ of mandamus compelling Respondent the Juvenile Court to fully comply with all statutory requirements and court rules, which have been found to be noncompliant, and not in harmless error, such as
- 1) this Court's interpretation of R.C. 3109.04(F)(3), to prevent Respondent the Juvenile Court from being prejudicial to a parent or party based on his/her financial condition or situation, whether the condition is temporary or permanent, and regardless of the reason for the condition—still considering court rules and statutes for the calculation of child support.
 - 2) R.C. 2301.03 and Rules 32(C) and 32(D) of Juvenile Procedure, Loc.R. 1(A) and Civ.R. 26(C) that delegate the duty to the Juvenile Court to protect the identity and information of Relator N.G., a minor child, as well as all records pertaining to the custody case.
 - 3) R.C. 3109.04 that defines the duty of the highest order for Respondent the Juvenile Court to protect the best interest of the child, by ordering the timely and proper hearing and adjudication of any motions or concerns regarding the health, safety or welfare of the child, while considering all relevant factors and ensuring all the parties not acting under any coercion or duress.

- E. Issue a writ of prohibition to prevent Respondent the Juvenile Court from proceeding in the custody case in a manner that exceeds their jurisdiction and is not authorized by law, and to forbid the Juvenile Court from exercising judicial power that doesn't uphold fundamental, constitutional and substantial statutory rights of the parties at all times.
- F. Issue declaratory relief addressing questions of law presented, such as the issue of concurrent jurisdiction of two trial courts over a juvenile or custody matter and claims arising out of custody matters.
- G. Issue other orders as necessary.

Respectfully submitted,

Relator-Father Pro Se

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