ORIGINAL

In the
Supreme Court of Ohio

THE STATE *ex rel.*
ARISTIDES JURADO
3963 Easton Way
Columbus, Ohio 43219

Relator,

v.

FRANKLIN COUNTY COURT OF COMMON PLEAS, DOMESTIC RELATIONS DIVISION, JUVENILE BRANCH
The Hon. Terri Jamison
373 South High Street,
Courtroom 65 (6th floor)
Columbus, Ohio 43215

And

TENTH DISTRICT COURT OF APPEALS
Hon. Court of Appeals Judges
373 South High Street
Court Tower, 14th Fl,
Columbus, Ohio 43215

Respondents.

15-0240

Case No. _____

ORIGINAL ACTION IN MANDAMUS AND PROHIBITION

VERIFIED COMPLAINT FOR WRITS OF MANDAMUS AND PROHIBITION WITH MEMORANDUM IN SUPPORT

Aristides Jurado
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FILED
FEB 12 2015
CLERK OF COURT
SUPREME COURT OF OHIO

PETITION FOR EXTRAORDINARY WRITS OF MANDAMUS AND PROHIBITION, AND ALTERNATIVE WRITS

This original action is brought in the name of the State on the relation of Aristides Jurado, who seek expedited injunctive relief, as well as extraordinary and alternative writs from this court as follows: **(1)** a preemptory writ of Prohibition and an extraordinary writ of prohibition to prevent Respondents Franklin County Court of Common Pleas, Domestic Relations Division, Juvenile Branch and Judge Jamison ("the Juvenile Court") from further exercising judicial power over collateral matters being appealed and that is unauthorized by law, in the Juvenile (Custody) Case No. 12JU-11-14479; **(2)** a writ of mandamus to require the Tenth District Court of Appeals and its panel of Judges to exercise their judicial duties of granting a Stay that Relator is entitled to as a matter of law; **(3)** an expedited alternative writ and immediate provisional injunctive relief to stay proceedings to avoid irreparable harm.

PARTIES

1. Relator Aristides Jurado ("A.J.") is resident of the State of Ohio, County of Franklin, and the defendant party in the Custody Case number 12JU-11-14479 of the Franklin County Common Pleas Court, Domestic Relations Division, Juvenile Branch, and and Appellant in cases number 15-AP-0026 and 15-AP-0080 of the Tenth District Court of Appeals

2. 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").

3. Respondents Judges of the Court of Appeal, are duly elected judges for the Tenth District Court of Appeals ("The Court of Appeals").

JURISDICTION AND VENUE

4. 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

5. This case arises from collateral matters that arose from the conduct of the proceedings in the custody dispute in the Juvenile Court. Specifically, contempt proceedings for allegations that Relator did not complete all HIPPA forms required by the Guardian Ad Litem's investigation. As a result of the **two out of five forms Relator allegedly missed, he received severe and extreme punishment including (a) the indefinite suspension of his parenting time, now going on for seven (7) weeks, (b) sentence of 10 days in Jail**.

6. This case is also the result of constitutional claims and questions of law against Respondents.

Background

7. Allegations of misconduct by the first appointed Guardian Ad Litem during her 18 month tenure in the Juvenile Case resulted in a grievance filed with the Disciplinary Counsel,

which was dismissed without an investigation, followed by an Original Action for Writs in this Court under case 2014-1225, for the purpose of seeking a recourse or remedy for the ongoing harmful misconduct by the GAL. The Original Action was also dismissed by this court.

8. As a result of Relator's effort to seek relief, irregularities in the Juvenile Court and with its proceedings continued incrementing in severity and frequency, giving the appearance that the parties, the GAL and the Court had engaged in retaliation.

9. One of the many irregularities during the conduct of proceedings by Respondent the Juvenile Court involved the first Show Cause hearing for Contempt, which was one of the claims in case 2014-1225. The proceeding was originally set for early July 2014. But due to the filing of the Original Action with this Court, it was never conducted.

10. Instead of filing a continuance of the hearing for a different date, the Show Cause hearing was "vacated", as asserted by Respondent the Juvenile Court in their Motion to Dismiss filed in case 2014-1225 with this Court.

11. On August 1 and August 4, 2014, two hearings were conducted by Respondent the Juvenile Court during the pendency of case 2014-1225, and the Show Cause hearing was not one of them. In fact it was not even mentioned. The first hearing was for the Removal of the GAL, and the second one was for the Modification of Child Support, both were conducted with numerous irregularities and resulted in inconsistencies between related Journal Entries issued at a later time, and the record of the case (such as transcripts). By chance or not, both hearings were about matters and controversies that were the subject of the Original Action for Writs, case 2014-1225, which was originally filed on July 18, 2014.

12. Because of time constrains, the August 1, 2014 for the removal of the GAL was never concluded and instead a continuance was set for a later date, which in turned changed to September 24, 2014. The Juvenile Court records only show the Motion for Removal of the GAL to be the only matter scheduled for that day.

13. In the morning of September 24, 2014 and prior to the start of the hearing set for 1:30pm, this Court made a ruling to dismiss case 2014-1225—a case that included constitutional claims such as deprivation of due process, Relator being precluded of opportunity to be heard during proceedings, etc. That afternoon, only hours after the dismissal of the Original Action, the Juvenile Court decided to conduct the second part of the hearing to remove the GAL in chambers and away from any type of recording device even over Relator's objections and requests for recording of it, an option that has consistently been available and used but only in the courtroom. Such proceeding conducted without being recorded is unauthorized by law under Juv.R. 37(A) and R.C. 2151.35(A)(2). Most importantly, because every other proceeding in the juvenile case over a two year period has been recorded, summoning counsel, Relator Jurado and the GAL to Chambers was an impropriety given the recent claims made by Relator of constitutional violations.

14. Since the proceeding conducted in Chambers on September 24, 2014, there has been no consensus as to what transpired in Chambers. Relator contends that the hearing to remove the GAL was never conducted and he was coerced into signing a Withdrawal of Motion form. His intentions to seek relief under Title VI were also mentioned. In the end, the court removed the GAL sua sponte without allowing more evidence of misconduct to be presented or cross-examination of the GAL to be completed. Still the initial cross-examination from August 1, 2014

had already established the occurrences of deceit and misconduct. Despite those facts, Respondent the Juvenile Court allowed the now former-GAL to return to the case as an Expert Witness for the Plaintiff. Also, it appears like the new GAL appointed the next day had already been selected prior to the September 24, 2014 proceeding.

15. Upon conclusion of the proceeding in Chambers, everyone returned back to the courtroom and another proceeding was conducted after Respondent the Juvenile Court decided to address in an impromptu manner the Motion to Show Cause from July that had been "vacated". That proceeding was recorded and the transcript shows that the Court overruled Relator's objections that he had not received noticed and that it was a requirement to give him notice to allow him to prepare for such important matter. In fact, the transcript of proceeding shows Respondent the Juvenile Court admitting, or not denying that the hearing had not been previously scheduled. Many more irregularities took place, but ultimately, Relator was found in contempt and sentenced to jail time to be served over the 2014 Thanksgiving Holidays—for the first time since the case started in 2012.

16. Relator timely filed a Notice of Appeal of those orders in the Tenth District Court of Appeal. The first appeal in the custody case was docketed under appeal case 14-AP-000872. He subsequently sought a Stay of Orders pending Appeal with Respondents the Juvenile Court and the Court of Appeals, and both were denied but at different times. The denial of Relator's Motion to Stay was issued even when he had made clear arguments that, without a Stay, the entire Appeal would be rendered moot, given that the sentence would be enforced and Relator would complete serving his days in Jail long before the Appeal could be heard on the merits. In

essence, Relator would be deprived of his constitutional right to appeal and his statutory right to a Stay with such denial.

17. During the Contempt compliance (purge) hearing on November 20, 2014, Relator was taken into custody by Deputy Sheriffs within minutes of the start of the hearing. After an hour of being detained, stripped of his personal belongings, padded, handcuffed, and locked in a holding cell with several inmates in uniform, the Court recalled Relator back to the courtroom. Fortunately for him, because of conflict of jurisdiction due to the pending Motion to Stay in the Appeals court at the time, Respondent the Juvenile Court vacated and rescinded the Entry just issued to enforce his sentence of jail time and imposing bond of twice the amount he allegedly owed. The controversy in this Contempt finding did not involve Child Support, but other financial obligations imposed by the Court.

18. Currently the judgment of Respondent the Juvenile Court with the first finding of Contempt is still on Appeal with the Tenth District Court of Appeals. Opposing counsel and the (new) GAL have encouraged the Court to again enforce the jail time sentence and the bond. The court has taken their request under consideration but has not acted on it, just yet.

Significant events and incidents that took place in December 2014

19. As the GAL engaged in an "email altercation" with the owner of the daycare used by Relator for his son, the child was expelled permanently from the facility. The altercation took place even after the GAL had been warned that (a) the daycare placement had been one of the main points of contention, (b) that the daycare owner had reported harassment by the mother of the child several months earlier, (c) that several attempts had been made through unethical

conduct to remove the child from that facility when he was first enrolled, and (d) that the daycare owner was one of Relator's witnesses.

20. After the severance with Relator's daycare, the GAL immediately pursued the confinement of the child at a daycare center utilized by the mother 50 miles away from Relator's home and place of employment, even when the GAL was aware that his car repairs had to be paid with charitable assistance by St. Vincent de Paul Society, a Catholic organization, and even knowing that such daily commute would disrupt the 2-year old child schedule and not be in the best interest of the child.

21. A few days after the child was expelled from the daycare facility and forced to attend daycare on the opposite side of Franklin County, Relator Jurado notified the parties and the GAL that he was staying with the child at home for that day, given that it was his parenting day and that he was struggling with the expense of driving such distance daily. On that same day, the GAL proceeded to intimidate and harass Relator Jurado by going to his home unannounced several times in an aggressive and intimidating manner, causing distress to the child, the child's elder grandparents, and to Relator. The alarming effects of the harassment and intimidating conduct by the GAL may be observed in the recorded 911 calls made by Relator and his parents after the GAL came to their home multiple times, and intensely banged on glass doors and windows, appearing as if he wanted to force his way in.

22. On the same day that the GAL intruded in Relator's home and life, he engaged in extensive ex-parte communications with Respondent the Juvenile Court.

23. On December 18, 2014, a hearing requested by the GAL was held. The GAL appeared to be giving information the Court for the first time about the incidents that had taken place

(the ex-parte communications were not known at the time). The Court defended the GAL's actions when Relator expressed concern and made claims regarding the conduct and incidents transpired. The court gave answers such as "we are not yet at the Best Interest", "this is not an evidentiary hearing", "we are only here to clarify the orders that the GAL inquired about" among other justifications to avoid addressing Relator's allegations. In the meantime, the GAL was allowed to make allegations against Relator, give opinions regarding parenting skills and speak on matters outside of the scope of the hearing. One of the outcomes of the hearing is an Entry issued by the Court ordering Relator to complete HIPPA forms for the GAL by a certain date, and also a standing order for summary punishment, by temporary suspension of his parenting time, to take effect as soon as the GAL would file a Motion for Contempt for non-compliance or failure to provide the HIPPA forms. Another significant outcome of the hearing was the recommendation of the GAL and decision of the court to allow the Mother of the child to keep him for 11 straight days over the holidays, when the child had never been apart from either parent for more than two days, except in one or two instances of 4-5 days. In reality, that was the preemptive summary punishment being given to Relator that was the beginning of an indefinite period that he would be without the child.

HIPPA Forms, Summary Punishment prior to finding of Indirect Contempt, and Second Appeal

24. Prior to the deadline to submit the HIPPA forms, Relator had emailed two of the forms he had been able to scan. Considering that he had already provided one of the doctor's information in the initial GAL forms, only two were left to turn in. The day before the deadline,

Relator asked the GAL for an opportunity to hand-deliver the forms to the GAL directly. Because of his work schedule over the weekend, the GAL directed Relator to drop them off at his office, and Relator complied.

25. For the next 2-3 days, Relator was engaged in long hours at work due to Payroll Year end and other activities. During that period, the GAL sent Relator several emails to let him know that he never received the forms. By the third email, the GAL gave Relator one more day to turn in the forms but asserted that no matter what Relator did at that point, the GAL was still filing a Motion for Contempt and inevitably relator's *"parenting rights will be terminated"*, which a big leap from the Court's orders to "suspend parenting time".

26. Relator finally had a chance to catch up and read all of the GAL's emails back to back that he had sent during that period. Before his last deadline, Relator conveyed to the GAL that, based on the GAL's conduct, he had indeed deliver the forms to his office and that, because of the GAL's conduct, it was clear by now that the GAL's intentions were to "terminate his parental rights". Nevertheless, Relator still drove to the GAL's office for the second time on the (late) afternoon of January 1, 2015 and dropped off the missing forms. He took note of what appeared to be a security camera recording at the entrance of the building, among other details. Up until the present time, the GAL still denies that he has received those missing forms.

27. The GAL indeed filed a Motion for Contempt and drafted a Proposed Order for the court to sign and file. In the meantime, the GAL, opposing counsel and the mother of the child coordinated with the daycare to enforce the summary punishment against Relator even before the Motion for Contempt was actually filed. Their swift action made sure that there was not a single gap between the 11 concurrent days the child had spent with his mother and the

"suspension" of Relator's parenting time, as if their ultimate goal was to separate father and son at any cost.

28. A week or two after the Motion for Contempt had been filed and the Proposed Order by the GAL had been adopted by Respondent the Juvenile court, Relator filed his 2nd appeal of these orders as well as other orders that were subject to a pending Motion for Relief under Civ.R. 60(B).

29. On January 16, 2015, Relator sought a Stay of the Order for summary punishment with both Respondents given that (a) it is unconstitutional to punish a person before giving them a chance to defend themselves and present evidence, etc.... the Contempt hearing had been scheduled for January 22, 2015, (b) summary punishment is only authorized by law in cases of direct contempt under R.C. 2705.01. And for indirect contempt under R.C. 2705.03, a proper hearing with adequate notice is required before a finding of Contempt can be made and punishment can be given, (c) such punishment was harming the child as much or more than punishing Relator, (d) a long weekend was upcoming for Martin Luther King Day during which Relator would not even have the option to visit his son at the daycare.

30. Relator's Motion for Stay pending Appeal of those orders was again denying by both Respondents.

Contempt Hearing, finding of Contempt and Third Appeal subject of this Action

31. During the 2nd Contempt hearing conducted on January 22, 2015, enough evidence was presented to show that Relator had made reasonable efforts to provide the 2 missing forms. He described the GAL's office, mailbox and other details that otherwise, Relator would not have known as he had never been there before, and gave the specific date and time of his

delivery. But the Court found that Relator did not make enough attempts beyond the terms and timeline of the order. In other words, Relator was found in Contempt for not continuing to try to provide the forms regardless of what the GAL was possibly doing with the initial copies. He was sentenced to 10 days in jail and a follow up hearing for compliance and purge of the Contempt, or otherwise enforcement of the sentence was set for February 12, 2015.

32. On February 5, 2015, a Motion for Leave to Amend Notice of Appeal was filed under the 2nd appeal to include the latest judgment of Contempt. Due to the Court Administrator's assertions that it would take a few days for it to be approved, a new Appeal was filed separately on February 6, 2015. On that same day, an Emergency Motion to Stay was filed with the Juvenile Court.

33. On February 6, 2015, Relator also filed with the Juvenile Court a Notice of Certification of Medical Incapacity that arose after he spent most of the day in the hospital on Wednesday February 4, 2015. Relator fell down the stair at the Moritz Law Library due to lightheadedness, fainting and chest pain. The fall was minor, but the concern was the symptoms prior to the fall, so his doctors advised him to go to the hospital. He had already been put on a Short-Term Disability Leave from work due to his failing health caused by the substantial emotional distress caused by the events surrounding the court case, his sudden separation from his son, etc.

34. In the letter by his doctor, he advised Relator to not attend court proceedings for the next few weeks and explained the reason for such advice. He was aware that Relator had several court proceedings on the week of February 9, 2015. The 2/15/2015 proceeding was not the only one.

35. On February 10, 2015, the staff attorney for Respondent the Juvenile Court called Relator and convey the message from the Court that he was expected to appear in Court on Thursday February 12, 2015 (regardless of the Motion to Stay or Medical Certificate). Respondent the Juvenile Court apparently honored the Notice of Medical Certification of Incapacity and set a continuance. For the 2/9/15 hearing. But it was not willing to do the same for the February 12, 2015 purge hearing scheduled to start at 9am. Instead, Respondent the Juvenile Court, through counsel, subpoena Relator's physician to appear in court with very little notice.

36. Almost immediately, Relator called the Court Administrator for the Tenth District Court of Appeals and gave him notice of his upcoming Emergency Motion for Stay pending appeal, given that it was now obvious the Juvenile Court was not granting his Motion to Stay. Throughout the case, any Motion to Stay has been consistently denied by the Juvenile Court. The Appellate rules of procedure require Appellants to seek a Stay in the trial court before seeking one in the Court of Appeals.

37. On February 11, 2015, his Emergency Motion was presented to Respondent the Judges of the Court of Appeals, along with a Response in Opposition filed by the GAL, which was never served to Relator.

38. Prior to the decision being issued by the Court of Appeals, Relator left messages for the Court Administrator to find out if anyone intended to file an responses in opposition because he intended to file a Reply. He also sent an email to the parties, the GAL and the Court Administrator for the same purpose, without knowing that the GAL had already filed a reply.

39. Before Relator had a chance to file a Reply, Respondent the Court of Appeal issued an Entry Denying Relator's Motion to Stay.

JUSTIFICATION FOR EXTRAORDINARY WRIT OF MANDAMUS

40. Relator incorporate by reference paragraphs 1-39 as if rewritten herein

Relator has a Clear Entitlement as a Matter of Right and Law to a Stay

41. The granting of a Motion to Stay under Civ.R. 62(B) is not discretionary based on case law established by this court through many decision over the years. For example, defendant-appellants are entitled to a stay of the judgment as a matter of right. The lone requirement of Civ.R. 62(B) is the giving of an adequate supersedeas bond." *State ex rel. Ocasek v. Riley*, 54 Ohio St. 2d 488, at 490, Supreme Court of Ohio (1978).

Once a Stay is denied and Relator is incarcerated, No available Remedy exist and the harm will be irreparable. Other than issuing a Writ of Mandamus, there is no adequate available Remedy for Relator.

42. If the Juvenile Court proceeds with the purge hearing and enforces the sentence of jail, the 3rd Appeal of the Contempt Order becomes moot automatically. After the sentence is served, his lost of liberty, an fundamental constitutional right can no longer be repaired or remedied.

The Right to Appeal is a Property interest granted by the Ohio Constitution.

43. This Court established that the Ohio Constitution grants its citizens the right to Appeal. "The right to an appeal is a property interest and a litigant may not be deprived of that interest without due process of law". *Rothman v. Rothman*, 124 Ohio St.3d 109, 2009-Ohio-

6410, at ¶ 4 (internal quotes omitted), citing *Atkinson v. Grumman Ohio Corp.* (1988), 37 Ohio St.3d. 80, 84-85, 523 N.E.2d 851

44. As stated previously, without a Stay of proceedings, the Appeal simply becomes mute and Relator effectively is being denied a constitutional right.

JUSTIFICATION FOR EXTRAORDINARY WRIT OF PROHIBITION

45. Relator incorporate by reference paragraphs 1-44 as if rewritten herein.

46. Relator has been summoned by Respondent the Juvenile Court to appear on February 12, 2015 to enforce his jail sentence. .

47. 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.

48. The exercise of their judicial power exceeds their jurisdiction and is not authorized by law as it infringes Relator fundamental and constitutional rights.

49. 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 ¶50, 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 ¶29.

50. "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 ¶51, 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

51. Relators incorporate by reference paragraphs 1-50 as if rewritten herein.

52. 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.

53. This court needs to enjoin the Juvenile Court to prevent it (a) from conducting the purge hearing and enforcing the jail sentence until Relator has his constitutional right to Appeal of those orders,

CONCLUSION AND PRAYER

Therefore, Relators pray that this Court:

A. Issue a writ of mandamus compelling Respondent The Appeals Court to issue a Stay pending Appeal.

B. Issue a writ of prohibition to prevent Respondent the Juvenile Court from proceeding with the purge hearing which exceeds their jurisdiction and is not authorized by law,

C. Issue other orders as necessary.

Respectfully submitted,

Relator Pro Se

By: _____

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY

EXHIBIT 1

KATHY HERNANDEZ, **Plaintiff-Appellee,**	:	
v.	:	
	:	**CASE NOs. 15-AP-000026,**
ARISTIDES JURADO, **Defendant-Appellant.**	:	**15-AP-000080**

APPELLANT-FATHER'S EMERGENCY MOTION TO STAY JUVENILE COURT'S CONTEMPT FINDING AND UPCOMING PURGE HEARING PENDING APPEAL AND MOTION TO WAIVE SUPERSEDEAS

Pursuant to Civ.R. 62(B) and App.R. 7(A), Appellant-Father Aristides Jurado, involuntarily acting Pro Se, hereby moves this Honorable Court for an order staying the Judgment issued by the trial court on January 22, 2015, including the Court's finding of Appellant-Father in Contempt and sentencing of jail time, and the upcoming purge hearing scheduled for February 12, 2015, until this Court makes a proper determination on the merits of this specific cause or until the entire Appeal is decided. Appellant-Father also requests for Supersedeas Bond to be waived given that it is not needed because the order being appealed and subject to this Motion to Stay does not involve any financial obligations. If for any reason this Court decides that a Bond is warranted, appellant request for this Court to set the Bond amount as opposed to dismissing this Motion. The constitutional importance of this Motion is set forth in the attached Memorandum in Support.

Respectfully submitted,

Appellant-Father Pro Se

By: _____

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APPELLANT-FATHER'S [RENEWED] MOTION TO STAY JUVENILE COURT'S CONTEMPT FINDING AND UPCOMING PURGE HEARING PENDING APPEAL AND MOTION TO WAIVE SUPERSEDEAS

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III. INTRODUCTION AND SUMMARY

Appellant-Father Aristides Jurado, involuntarily acting Pro Se, requests this honorable court to expedite consideration and grant a stay of the enforcement of orders and judgment, as well as the upcoming proceeding in regards to the contempt finding and upcoming purge hearing contained in the Juvenile Court's Entry issued and filed in this action on January 22, 2015, pursuant to Civ.R. 62(B) and App.R. 7(A). A Stay should be granted because, (a) under Civ.R. 62(B), Defendant-Appellant is **entitled** to a stay of the trial court's orders as a matter of right, (b) Defendant-Appellant faces the likely loss of personal liberty through imprisonment, which will no longer have a remedy once it occurs, even if the juvenile court's orders and decisions are reversed on appeal and the case is remanded, (c) Because the likelihood for Defendant-Appellant to prevail in this Appeal is quasi-certain, and (d) Defendant-Appellant is dealing with a severe but temporary medical condition and medical advice has been given to not participate in Court proceedings for a few weeks (see attached Certificate of Medical Incapacity and Defendant Notice filed with the trial court).

Defendant-Appellant also asks for this court to take notice that the Judgment being appealed and subject to this Motion does not involve any financial obligations, and thus Supersedeas Bond should not be required.

Defendant-Appellant also asserts that he sought a Stay with the trial court unsuccessfully. He filed an Emergency Motion to Stay pending Appeal with the trial Court on February 6, 2015 (Motion attached), but the Court denied it by means of Benita Reedus, staff attorney for Judge Jamison, calling Defendant today February 10, 2015 to let him know that his presence is expected by the court on Thursday morning due to the Summons issued in relation to the Contempt finding, and despite the letter from his doctor. Given the consistent outcomes of past Motions to Stay that do not get resolved

prior to the date in question, it is reasonable to expect that the trial Court will not file an Entry denying Defendant's Motion to Stay pending Appeal until after the purge hearing.

IV. ENTITLEMENT TO A STAY OF ORDERS PENDING APPEAL AS A MATTER OF RIGHT

Defendant-Appellant asserts that the granting of a Motion to Stay under Civ.R. 62(B) is not discretionary based on well-established case law followed by this Court and by the Supreme Court of Ohio. For example "defendant-appellants are entitled to a stay of the judgment as a matter of right. The lone requirement of Civ.R. 62(B) is the giving of an adequate supersedeas bond." *State ex rel. Ocasek v. Riley*, 54 Ohio St. 2d 488, at 490, Supreme Court of Ohio (1978).

In *Kelm v. Hess, infra*, this court clarified that "* * * in view of appellant's entitlement to a stay of the trial court's judgment as a matter of right, upon giving adequate bond". *Kelm v. Hess*, 8 Ohio App. 3d 448. Tenth District Court of Appeals (1983); *see also Bob Krihwan Pontiac-GMC Truck, Inc. v. Gen. Motors Corp.*, 145 Ohio App. 3d 671, at 676, Tenth District Court of Appeals (2001).

Given that an adequate Supersedeas Bond "is the lone requirement" for the automatic granting of a Stay, Defendant-Appellant underscores the fact that no financial obligation is involved, but if this Court finds a reason to uphold the need for Supersedeas Bond, that it should grant the Stay on the condition of giving the bond.

V. NECESSITY OF A STAY OF THE ENFORCEMENT OF ORDERS IS PARAMOUNT

This court should not deny this Motion to Stay because without such relief, Appellant-Father ("Defendant-Appellant ") faces the certain loss of personal or physical liberty through imprisonment,

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which will no longer have a remedy once it occurs, even if the juvenile court's orders and decisions are reversed on appeal and the case is remanded.

V.A. IRREVERSIBLE HARM RESULTING FROM DEPRIVATION OF CONSTITUTIONAL RIGHTS, INCARCERATION

In addition to a fundamental right to personal liberty, a substantial right is also a stake: The right to Due Process requiring fair proceedings, and whether that can be accomplished without the right to counsel. Both the U.S. Supreme Court and the Supreme Court of Ohio have established that there is no right to counsel in civil contempt proceedings (unless provided by statute), including both a Show Cause hearing as well as a Purge Hearing, but only with the condition that there are procedural safeguards[1], including a proper notice of hearing, an R.C. 2705.03 hearing meeting all of the requirements of R.C. 2705.05, an opportunity to object to the initial entry establishing payment amounts or allocating costs which are the subject of the contempt, and the opportunity to appeal the contempt finding and purge conditions. These all serve as protection for the parent being charged with contempt. In the instant case, none of the procedural safeguards have been available to Defendant-Appellant , except for the latter, and these violations are also the subject of the appeal for which this Motion for Stay is conditioned upon. If the last one of the safeguards left—for the opportunity to appeal the contempt finding and purge conditions— to protect Defendant-Appellant is denied by not granting this Motion for Stay, then the purge hearing scheduled for January 22, 2015 will take place without any of the provisions set by statute and as established by the Supreme Court of Ohio and the U.S. Supreme Court, to guarantee a fair court proceeding and the due process protections when the loss of personal liberty through imprisonment is at stake, as it already happened on November 20, 2014.

[1] See *Liming v. Damos, and Turner v. Rogers* infra

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V.B. LAW AND ARGUMENT IN RESPECT TO INDIGENCY AND RIGHT TO COUNSEL

R.C. 120.03 establishes the power and duty of the Ohio Public Defender Commission to promulgate "standards of indigency and minimum qualifications for legal representation by * * * appointed counsel". R.C. 120.03(B)(1). As a result, the Ohio Public Defender Commission promulgated administrative rules under Ohio Administrative Code for establishing those standards of indigency.

> The Ohio public defender commission's standards for determining indigency status are promulgated pursuant to sections 120.03 and 120.05 of the Revised Code. Further considerations include State vs. Tymcio (1975), 42 Ohio St.2d. 39 * * * The pivotal issue in determining indigency is not whether the applicant ought to be able to employ counsel but whether the applicant is, in fact, able to do so.

(Emphasis Added.) O.A.C. 120-1-03 *Standards of Indigency.*

> If an *applicant who is not indigent* is able to show that they have tried to employ counsel, but is still *unable to employ counsel, then the court must appoint counsel* in accordance with *State vs. Tymcio* (1975), 42 Ohio St. 2d 39.

(Emphasis Added.) O.A.C. 120-1-03, division (E)

In *State vs. Tymcio*, the Supreme Court of Ohio reversed the decision by the Court of Appeals and remanded the cause back to the trial court, after determining that the trial court failed to "ensure that defendant was adequately represented by counsel". *State v. Tymcio*, 45 Ohio St. 2d 39. In the court opinion authored by Justice Brown, it was asserted that,

> a bare finding of non-indigency does not explain why an accused, such as the defendant in this case, who represents that he has been unable while under bond to obtain adequate counsel with his available resources because of demands for substantial cash retainers, must stand alone.

Id. at 45.

It has been well established that Defendant-Appellant has made the same claims as the defendant in the *Tymcio* court multiple times in court proceedings and has been included in several of his motions, including his Emergency Motion for Removal of GAL[2] filed on February 12, 2014, Motion to Allow Appointment Of Stand-By Co-Counsel[3] filed on March 19, 2014, during the March 13, 2014 Court Hearing[4], at the court proceeding[5] on March 26, 2014, the May 12, 2014 Court Hearing[6], as well as the September 24, 2014 hearing[7]. Also, this was one of several claims raised in the Original Action case filed with the Supreme Court of Ohio.[8]

In conflict with O.A.C. 120-1-03 and the precedent set by *State v. Tymcio*, the Juvenile Court's Entries dated September 26,2014 and January 22, 2015, included language in respect to the finding that,

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[2] See Defendant-Appellant 's Emergency Motion for Removal of Guardian Ad Litem, filed on Feb. 12, 2014 in the Juvenile Court Docket (also indexed as Exhibit XL4-9)

[3] See Defendant-Appellant 's Motion to Allow Appointment Of Stand-By Co-Counsel, Mar. 19, 2014

[4] See Transcript of Court Proceeding – Hearing for Emergency Motion to Remove Guardian Ad Litem, Mar. 13, 2014 (also indexed as Exhibit XL4-10), in which this court made conclusory statements about the performance of the GAL and about Defendant-Appellant 's concerns with the GAL, without giving him an opportunity to be heard at any point that day or in the past, in regards to the Removal of the GAL. He was also wrongfully penalized when he had complied with the orders as written from Jan 23, 2013

[5] See Transcript of Court Proceeding – Hearing for Miscellaneous Pending Motions and Matters in front of the Magistrate, Mar. 26, 2014. (also indexed as Exhibit SCO-O) This transcript was also filed with the Supreme Court of Ohio on July 22, 2014 in support of Defendant-Appellant 's Motion to Stay.

[6] See Transcript of Court Proceeding – Hearing for Motion to Stay (by Judge), May 12, 2014 (also indexed as Exhibit XL4-11)

[7] See Transcript of Court Proceeding – Hearing for Motion to Remove GAL that turned into Show Cause Hearing, Sep. 24, 2014 (also indexed as Exhibit ZA-9)

[8] See Exhibit SCO-2, which includes a filing with the Supreme Court of Ohio: Motion for Alternative Writ and Emergency Stay; Also Exhibits SCO-N and SCO-O include supplement filings all dated July 22, 2014. This motion includes, among other allegations, facts and arguments demonstrating the misconduct and malice of opposing counsel and Mother, such as Mom's first Motion To Show Cause that was filed with malice and in bad faith, with the intent to harass and intimidate.

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> Defendant screened for court appointed counsel prior to the last court date. The Court finds that Defendant was over income for court appointed counsel. Defendant has had many opportunities to secure private counsel but has consistently chosen to proceed *pro se.*

Franklin County CPC, Juvenile Court's Entry[9] dated September 26 2014, page 3 and Entry dated January 22, 2015. The screening for court appointed counsel the Juvenile Court refers to in the above entry is solely based on the fact that Defendant-Appellant completed and submitted an affidavit of indigency. Given that there is no reflection in the record that an investigation was undertaken by the court, or an attempt was made to identify the circumstances under which Defendant-Appellant was still unable to retain counsel, the Juvenile Court's bare findings of indigency alone should be construed as the Juvenile Court's "failure to ensure that defendant was adequately represented by counsel". *Tymcio, supra,* at 45.

V.C. LAW AND ARGUMENT IN RESPECT TO IRREVERSIBLE CONSTITUTIONAL CLAIMS

In *Liming v. Damos*, 2012-Ohio-4783, the Supreme Court of Ohio established the rules or conditions on which a civil-contempt purge hearing is deemed to be a fundamentally fair proceeding as required by due process without the need to guarantee the right to appointed counsel.

> Although the loss of personal liberty through imprisonment is an important consideration, the Supreme Court nonetheless found that other factors outweigh that private interest and held that, "the Due Process Clause does not automatically require the provision of counsel at civil contempt proceedings * * * In particular, that Clause does not require the provision of counsel *where the opposing parent * * * **is not represented** by counsel* and *the State provides **alternative procedural safeguards*** equivalent to those we have mentioned (adequate notice of the importance of ability to pay, fair opportunity to present, and to dispute, relevant information, and court findings).

[9] See Entry of Final Appealable Order (finding of Contempt) , Sep. 26, 2014 (also indexed as Exhibit ZA-15)

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(Emphasis Added.) *Liming v. Damos*, 133 Ohio St.3d 509, 2012-Ohio-4783, at ¶ 27, citing the opinion of the U.S. Supreme Court in *Turner v. Rogers*, __ U.S. __, 131 S.Ct. 2507, 180 L.Ed.2d 452 (2011), at 2520.

In *Liming*, the Court went further to use the *Mathews v. Eldridge*[10] balancing test, in which one of the factors determines the risk that, in this case, the upcoming purge hearing will lead to an erroneous decision. The court found that to be unlikely, but only if for the first Contempt proceeding,

> the parent will have been given notice of the hearing date, the right to counsel if indigent, and the potential penalties. R.C. 2705.031(C). At that initial contempt hearing, the parent will have had the opportunity to defend against the contempt charges and otherwise *object to or appeal from a finding of contempt and any purge conditions* * * * Liming was represented by an attorney at the contempt hearing in October 2008. Neither he nor his counsel objected to the magistrate's decision or otherwise appealed the contempt order. * * * The risk of the court's reaching an *erroneous decision at the purge hearing, therefore, was minimal*.

(Emphasis Added.) *Id.* at ¶ 30.

Given that (1) Plaintiff-Appellee has been represented—not by one, but—by two attorneys until recently[11], and the former-GAL may count as a third counsel for her as well, (2) the procedural safeguard of adequate notice was lacking[12] (in the Court Transcript, Father's objections were overruled even when the Court did not deny that there was no notice of hearing or the proceeding was not scheduled for that day) (3) Defendant was

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[10] See *Liming v. Damos*, supra, at ¶8 and ¶28 , citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)

[11] See Transcript of Court Proceeding – Hearing for Miscellaneous Pending Motions and Matters in front of the Magistrate, Mar. 26, 2014. (also indexed as Exhibit SCO-O) This transcript was also filed with the Supreme Court of Ohio on July 22, 2014 in support of Defendant-Appellant 's Motion to Stay.

[12] See Transcript of Court Proceeding, Hearing for Removal of GAL that turned into Impromptu Show Cause Hearing, Sep. 24, 2014, at 17:15–18:25 (also under Exhibit ZA-8)

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precluded from the procedural safeguard of a fair opportunity to present[13], and to dispute, (4) the show cause hearing was conducted in a manner not authorized by law, based on R.C. 2705.05 and the stipulation that "At the hearing, the court shall investigate the charge and hear ***any*** *answer or testimony* that the accused makes or offers". (Emphasis added.) R.C. 2705.05(A). it can be clearly concluded that those procedural safeguards have not been offered to Defendant-Appellant [14].

The claim Defendant-Appellant makes here is that, if the above condition of the opportunity to "appeal from a finding of contempt and any purge conditions" does not take place before the purge hearing, the risk of an erroneous decision at the purge hearing increases significantly, and the unwarranted loss of personal liberty could take place, with no adequate remedy after the fact.

V.D. THE THREAT OF UNAUTHORIZED INCARCERATION IS REAL, IMMINENT AND PRESENT

The risk and threat of incarceration that is the basis for this Motion to Stay is not remote or speculative. This is evident and virtually a fact when considering that the trial court already denied Defendant-Appellant 's Motion to Stay in the first instance and ordered him detained. He was restrained with handcuffs in a holding cell for about one hour with other inmates[15] before the Court recalled him and vacated his recently issued orders, deferring to this court's authority to address Defendant-Appellant 's Motion for Emergency Stay filed and pending with this court at the time. As it stands, the Purge Hearing is scheduled for January 22, 2015

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[13] See Transcript of Court Proceeding, Hearing for Removal of GAL that turned into Impromptu Show Cause Hearing, Sep. 24, 2014, at multiple places in the transcript (also under Exhibit ZA-8)

[14] See Transcript of Court Proceeding, Hearing for Removal of GAL that turned into Impromptu Show Cause Hearing, Sep. 24, 2014, at 40–44, and other multiple places in the transcript (also under Exhibit ZA-8)

[15] See Section VI.C.2 titled *Defendant-Appellant Defendant-Appellant taken into custody on November 20, 2014*

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after being continued, along with the Motion to Stay that was initially denied.[16] There is no indication that the November 20, 2014 actions and decisions by the Juvenile Court will not be repeated on January 22, 2015.

VI. REQUEST FOR SUPERSEDEAS BOND TO BE WAIVED

VI.A. PRESENT INABILITY TO PAY MAKES SUPERSEDEAS REQUIREMENT A DENIAL OF THE AVAILABLE REMEDY FOR INJUNCTIVE RELIEF OR STAY

VI.A.1. Defendant-Appellant Has Made A Good Faith But Failed Effort To Secure Bond, True Inability to Pay

Defendant-Appellant 's Inability to Pay has been or can be established with Bank account statements, Affidavit of Inability to Pay[17], Landlord Eviction Notices[18], Daycare Facility Non-Payment Notice[19], correspondence with Plaintiff-Appellee about Defendant-Appellant 's inability to secure transportation to drop off child or to commute to work,[20] and ultimately, his status as a recipient of charitable assistance by a national religious charitable organization. Specifically, Defendant-Appellant has been granted financial assistance by the local chapter of The Society of St. Vincent de Paul[21], one of several Catholic organizations under the Diocese of Columbus, with a 501(c)(3) designation by the IRS. If it wasn't for their

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[16] See Entry of Motion for Continuance granted, Nov. 20, 2014 (also indexed as Exhibit ZA-13)

[17] See Affidavit filed concurrently with this Motion

[18] See Exhibit ZA-7 - Eviction Notice - Aristides Jurado 3 day, Nov.12, 2014

[19] See Exhibit ZA-4 - 2014-11-08 Daycare Notice for Non-Payment

[20] Exhibit SCO-U – Miscellaneous documents that demostrate the impact of the current excessive (and unconstitutional) Child Support obligation, including the detriment of the Best Interest of the Child

[21] See Exhibit ZA-5 –Check and Invoice from Car Repair Shop Paid for by the St. Vincent de Paul Society

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most recent intervention, Defendant-Appellant would no longer be able to produce an income or drive his two year old child safely[22]. Currently, Defendant-Appellant has the option to purge the Contempt by paying $2,880.00, an amount he doesn't have, or is far from having.

VI.A.2. Reliance On Financial Assistance and Loans To Make Ends Meet on Each and Every Month For The Past 14 Months

Coworkers, family and friends have been providing financial assistance to Defendant-Appellant for the past 14 months, not only to help cover certain litigation expenses, but also to pay for basic bills. Still many bills, including medical ones, and over drafted accounts have been left unpaid for months, which now has affected Defendant-Appellant 's ability to obtain credit or other basic financial services.

VI.B. NO EVIDENCE OF PREJUDICE OR HARM TO BE CAUSED TO PLAINTIFF-APPELLEE IF SUPERSEDEAS BOND IS WAIVED

VI.B.1. Evidence of Plaintiff-Appellee's Surplus Funds

Plaintiff-Appellee has summarily rejected Defendant-Appellant 's proposals for the reduction of both parents' expenses as it relates to daycare attendance. The proposal represented a combined savings of over $1,500.00/month for both parents. Moreover, Plaintiff-Appellee objected Defendant-Appellant 's attempts to implement the part of his proposal that only affected his parenting time, allowing him to save $800/month that would have been applied to any past due obligations he may have had at the time, and could have averted the current finding of contempt.[23]

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[22] See Exhibit ZA-5 - St. Vincent de Paul Society - Charitable Assistance-related correspondence with the Local chapter leadership

[23] See Exhibit ZA-8 – E-mail from Mother to Defendant-Appellant refusing to let the Child's grandparents take the role of daycare providers, not on during her parenting time or Defendant-Appellant 's. Even with shared custody and 50/50 parenting schedule, Defendant-Appellant has

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The fact that Plaintiff-Appellee volunteered to pay for GAL fess or other costs long before they are due, before it is requested of her, or before it is actually needed establishes the presumption of her availability of surplus funds.

VI.B.2. Current Child Support Orders Set Excessive Obligation As a Source Of Surplus Funds, while Plaintiff-Appellee enjoys a notably higher standard of living

It has been established and settled that Mother's base income is not less than Defendant-Appellant 's income based on Mother's sworn testimony[24], and the paystubs Defendant-Appellant provided from his employer to the Court and to the parties.[25] Defendant-Appellant has also produced and attempted to present evidence with the Juvenile Court of his lack of assets. But the Juvenile Court has not yet considered all sources of income from either parent. Defendant-Appellant 's proper compliance with the child support orders and obligation with no arrears for at least the past 9 months is an undisputed fact. It is also undisputed the fact that both parents are incurring in almost identical child-related expenses, including medical out-of-pocket expenses, and health insurance premiums for the child, among many others that both incur on a regular basis. Twelve months ago Defendant-Appellant filed a Motion to Modify

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been precluded from making relatively minor parenting decisions in his own time. Defendant-Appellant offered it as a solution so that the child's grandparents can nurture him in a way only loving grandparents can, and to aid both parents lower their expenses, especially Defendant-Appellant having such financial crisis. Only because Mother did not have a close and stable family when growing up, or close family support, she does not allow their son to enjoy the benefits of being surrounded by close family that will care for him unconditionally. The court has supported such position by not addressing the issues.

24 Transcript of Court Proceeding – Hearing of Motion for Modification of Child Support, Aug, 4, 2014

25 Exhibit SCO-R – Containing all the documents introduced as exhibits during the Aug 4, 2014 hearing for Motion to Modify Child Support. The court never acknowledged receiving these documents, even when the bailiff did confirm he made one set of copies for opposing party and another set for the court. The court's copies have never been found. And the Motion was ultimately dismissed (currently pending a Motion for Relief from Judgment 60(B))

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Child Support, which remained pending until not long ago even when he desperately needed the court to address it because of the excessive child support obligation ranging between $1,150.00 and $1,300.00 to Mother as the oblige, in addition to the $800.00/month of tuition that the court has been forcing Defendant-Appellant to make for mandatory daycare attendance of the child, without any compelling reason and when is completely unnecessary given the existence of daytime child supervision and recreation alternatives that are virtually tuition-free. On August 4, 2014, the Court finally heard Defendant-Appellant 's Motion, but only after he brought it up as a claim in his original action with the Supreme Court of Ohio. Despite having knowledge of Defendant-Appellant 's vacation with the child that had started on August 2, 2014, the court denied a continuance and dismissed the Motion only a few minutes into the hearing for multiple reasons which are now the basis of a pending Motion for Relief of Judgment under Civ.R. 60(B).

No evidence has been presented or introduced that indicates a child support obligation of $0.00 (zero) would not have been appropriate effective as early as January 1, 2014 or before, in addition to refunds Defendant-Appellant may be entitled to, which are based on a provision in the current child support agreed order, which went into effect in January 2013. **As evidence of the higher standard of living Mother is enjoying as a product of the $13,000.00+ overage in child support payments received, it is the fact that Mother purchased a brand new SUV import vehicle valued at a minimum of $28,000.00** during the time when Defendant-Appellant was unemployed and still paying his $1,200/month child support obligation, child care tuition, etc. which required him to max out his credit cards while choosing which bills not to pay each month to be able to put food on his table. These facts so far have not been disputed, and have been included in testimony on sworn affidavits included

with multiple court filings, such as Defendant-Appellant 's filings with the Supreme Court of Ohio.[26]

VI.B.3. Motions to Show Cause filed in Bad Faith

The bad faith intent behind the filing of Motions to Show Cause has been established in Defendant-Appellant 's filing with the Supreme Court of Ohio[27], and in his Motion to Disqualify Counsel[28] and Supplemental Memorandum filed with the trial court[29]. The evidence and arguments presented should at least meet the Manifest Weight of Evidence standard.

VI.B.4. Trial Court denied Defendant-Appellant an Opportunity to Present and Prove Intent

During the impromptu Show Cause Hearing on September 24, 2014, the trial court denied Defendant-Appellant 's attempts to present evidence, argue and establish that Plaintiff-Appellee and opposing counsel's filing of the Motion to Show Cause was filed with Bad Intent and Malice.[30]

VII. APPLICATION TO THE TRIAL COURT FOR A STAY IS NOT PRACTICABLE

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[26] Exhibit SCO-2 – includes a filing with the Supreme Court of Ohio: Motion for Alternative Writ and Emergency Stay; and Exhibits SCO-N and Exhibits SCO-O with supplement filings all dated July 22, 2014. This motion, among other allegations, includes facts and arguments demonstrating the misconduct and malice of opposing counsel and party, such as Mom's first Motion To Show Cause that was filed with malice and in bad faith, with the intent to harass and intimidate.

[27] See Exhibit SCO-2 - Motion for Alternative Writ and Emergency Stay (SCO 2014-1225)

[28] See Exhibit ZA-2 – Defendant-Appellant 's Motion to Disqualify Counsel

[29] See Exhibit ZA-3 – Defendant-Appellant 's Supplemental filing to Motion to Disqualify Counsel

[30] Transcript of Court Proceeding – Hearing for Motion to Remove GAL that turned into Show Cause/contempt, Sep. 24, 2014 (also indexed as Exhibit ZA-9)

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Under App.R. 7(A), Defendant-Appellant hereby establishes that seeking relief in the first instance in the trial court is not practicable, or that waiting for the trial court's adjudication of his pending Motion to Stay pending appeal will defeat the purpose of such relief. As detailed below, the Juvenile Court is unwilling to adjudicate or issue a judgment on Defendant-Appellant 's Motion to Stay, but not before denying it in the first instance. Similarly, the Juvenile Court is unwilling to hear any Motions filed by Defendant-Appellant, even when they are deemed to be Emergency matters, and Defendant-Appellant has the statutory right for an ex-parte hearing, as it occurred on November 24, 2014. As stated before, the Court already communicated that Defendant's presence is expected at the purge hearing on Feb. 12, 2015, despite the pending Motion to Stay and despite the Medical Certification issued by his doctor.

VII.A. JUVENILE COURT'S CONSISTENT PATTERN AND PRACTICE, INTENT TO DENY MOTION TO STAY

VII.A.1. Juvenile Court's intent to impose max. supersedeas bond possible and discouraged Appeal.

During the September 24, 2014 hearing, the court first declared the Contempt (finding) Order to be a non-appealable order.[31] Upon insistence from Defendant-Appellant , the court corrected itself affirming the appealable nature of the order but still pointed out to Defendant-Appellant the requirement to pay the bond that is equal to the amount he has been unable to pay in the first place. This is all an indication of the trial court's intent to deny or at least to discourage Defendant-Appellant to appeal the decision, not to mention the seeking of a Stay for the Purge Hearing.

[31] Transcript of Court Proceeding – Hearing for Motion to Remove GAL that turned into Show Cause/contempt, Sep. 24, 2014 (also indexed as Exhibit ZA-9)

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VII.A.2. Three previous Motions to Stay denied.

On April 9, 2014, Defendant-Appellant filed a Motion to Stay with the Juvenile Court pending resolution of his impending Original Action in Mandamus and Prohibition with the Supreme Court of Ohio. Unfortunately, it took him another 3 more months to raise enough funds to cover the expenses related to printing and filing of the complaint. On May 12, 2014, after overruling Defendant-Appellant 's arguments and objections, the Juvenile Court denied his Motion to Stay.[32] Even though the Original Action had yet to be filed, that was not raised as an issue.

On August 28, 2014, Defendant-Appellant filed a Renewed Motion for Stay of Proceedings until adjudication of his case with the higher court. On September 24, 2014, during a proceeding that took place in chambers and unauthorized due to lack of recoding mechanism pursuant to Juv.R. 37(A), Defendant-Appellant explained to the Juvenile Court his basis for the Motion to Stay—which in sum was the unfairness in the proceedings—and presented as the main example his inability to exert his right to discovery in respect to the GAL file. The court then offered a solution: to schedule an appointment with the GALs assistance for Defendant-Appellant to review her file while on premises and identify any relevant documents that would need to be copied, as opposed to making copies of the entire file. Given Defendant-Appellant 's satisfaction with that solution, the court proceeded to deny his Motion to Stay. (To this day, Defendant-Appellant has been unable to review the GAL's file). It is of significance that the judgment entry filed on the matter two days later is inconsistent with this account of the event in chambers. The one factor in aid of the reconciliation of these discrepancies is the timing of when the Juvenile Court learned about the

[32] Transcript of Court Proceeding – Hearing for Motion to Stay (by Judge), May 12, 2014 (also indexed as Exhibit XL4-11)

denial of Defendant-Appellant 's Motion for Reconsideration by the Supreme Court of Ohio. At the point in the proceeding when his Motion to Stay was argued, the Juvenile Court appeared to be unaware that a few hours earlier on that same day, the original action had come to an end one final time.

VIII. IGNORING MEDICAL CERTIFICATION AND ADVISE IS UNREASONABLE

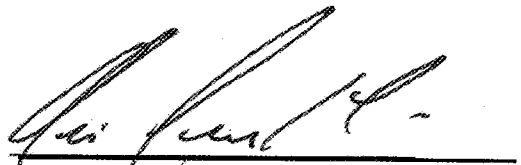
The fact that the court is unwilling to delay the purge hearing by a couple of weeks, when no party is being prejudiced by such delay considering that risk for injury is real is unreasonable. There is a good amount of evidence that the medical certification has merit. Even Defendant's employer as well as their insurance company approved a Short-Term Disability leave given the circumstances. (see attached Certificate of Medical Incapacity and Defendant Notice filed with the trial court).

IX. CONCLUSION

For all the reasons stated above, and for the proper carriage of justice, this court should grant this Motion to Stay.

Respectfully submitted,

Appellant-Father Pro Se

By: 

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY

KATHY HERNANDEZ, **Plaintiff-Appellee,** **v.** **ARISTIDES JURADO,** **Defendant-Appellant.**	:	15-AP-26 **CASE NO.** 15-AP-80

AFFIDAVIT OF DEFENDANT-APPELLANT ARISTIDES JURADO
FOR VERIFICATION OF HIS MOTION FOR
EMERGENCY STAY OF ORDERS PENDING APPEAL

State of Ohio
County of Franklin SS.

Now comes Aristides Jurado as the Affiant herein and having been duly sworn and cautioned deposes and states that he is the Defendant-Appellant in the foregoing action, that he has reviewed the foregoing motion, and that the facts and allegations stated therein are true to the best of his knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.

Aristides Jurado

SWORN to before me and subscribed in my presence this 5th day of February, 2015.

TIA THOMAS
Notary Public, State of Ohio
My Commission Expires
May 04, 2015

Notary Public/Deputy Clerk

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served was served via direct electronic mail on this 10th day of February, 2015:

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Appellant-Father Pro Se

By: _____

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

KATHY HERNANDEZ, **Plaintiff,**	:	**CASE NO. 12 JU 11-14479**
v.	:	
	:	**JUDGE JAMISON**
ARISTIDES JURADO, **Defendant.**	:	

EXHIBIT

DEFENDANT-FATHER'S NOTICE
OF MEDICAL CERTIFICATION OF INCAPACITY

Now comes Defendant-Father Aristides Jurado, acting Pro Se, and hereby gives notice to this court and to the parties of Defendant's incapacity and inability to participate in proceedings based on the Medical Certification attached.

Because of the increased adversity Defendant has had to endure for the past two years, but specially in the past 2-3 months, his health has been severely affected, requiring a day in the hospital this past week.

Given that this court and clerk's office do not accept a Motion for Continuance of proceedings, Defendant hereby puts notice of the need for continuance of this coming week's proceedings based on medical advice as represented in the attached letter by his OhioHealth attending physician.

Respectfully submitted,

Defendant-Father Pro Se

By: _____

ARISTIDES JURADO
3963 Easton Way
Columbus, OH 43219
(305) 799-2212
ari_jurado@qualineconsulting.com

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

KATHY HERNANDEZ,	:	CASE NO. 12-JU-11-14479
Plaintiff-Mother,	:	
-vs-	:	JUDGE JAMISON
ARISTIDES JURADO,	:	
Defendant-Father.	:	

AFFIDAVIT OF DEFENDANT-FATHER ARISTIDES JURADO FOR VERIFICATION OF HIS NOTICE OF MEDICAL INCAPACITY

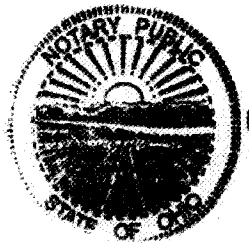
State of Ohio
County of Franklin SS.

Now comes Aristides Jurado as the Affiant herein and having been duly sworn and cautioned deposes and states that he is the Defendant in the foregoing action, that he has reviewed the foregoing motion, and that the facts and allegations stated therein are true to the best of his knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.

Aristides Jurado

SWORN to before me and subscribed in my presence this 6th day of February, 2015.



TIA THOMAS
Notary Public, State of Ohio
My Commission Expires
May 04, 2015

Notary Public/Deputy Clerk

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served was served via the court's electronic filing system on this 6th day of February, 2015, and direct e-mail upon the following:

Erika Smitherman
Ronald R. Petroff
Petroff Law Offices, LLC
140 E. Town Street, Suite 1070
Columbus, Ohio 43215
Attorneys for Plaintiff
ems@petrofflawoffices.com

Thomas M. McCash, Esquire
55 S. High St. Suite 210
Dublin, Ohio 43017
tmccash@columbus.rr.com
Guardian Ad Litem

Defendant-Father Pro Se

By: _____

ARISTIDES JURADO
3963 Easton Way
Columbus, OH 43219
(305) 799-2212
ari_jurado@qualineconsulting.com

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Doctors Hospital
Family Practice
OhioHealth

2030 Stringtown Road
Grove City, Ohio 43123-3993
614 | 544-0101 fax | 544-0102

To Whom It May Concern, 2/6/15

I am the treating physician for Aristides Jurado, DOB 12/12/70. I have known the patient for at least 6 years. The patient did not suffer from anxiety until recently due to stressors in his life regarding the custody of his son. This anxiety has caused a recent panic attack that required treatment at the Ohio State University Emergency Room. The source of the anxiety seems to stem from worry about court proceedings and sudden separation from his son. The patient has had follow up in our office and treatment changes were instituted.

The patient is receiving treatment through our office with medical therapy, and counseling through Catholic Social Services.

The patient is now on short term disability from work due to this amplification of anxiety. This disability began 1/6/2015 and will be continuously re-evaluated. The patient has been compliant with treatment and will continue to follow up again soon. Our hope is that continued treatment will allow the patient to handle better acutely stressful events.

In light of the above, my medical advice is that this patient does not attend any court proceeding in the upcoming week of February 9, 2015, so as to prevent another panic attack. I suggest allowing 3-4 weeks more time for treatment to work will help this patient be less susceptible for panic in a stressful environment.

If there are any questions regarding this patient and the patient gives consent, please feel free to contact me at the information listed on our letter head.

Sincerely,

Andrew Eilerman, DO

Associate Clinical Professor, Ohio University Heritage College of Osteopathic Medicine

Doctors Hospital Family Practice

Family Practice Residency Training
in affiliation with

Ohio University College of Osteopathic Medicine

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

KATHY HERNANDEZ, **Plaintiff,**	:	**CASE NO. 12 JU 11-14479**
v.	:	**JUDGE JAMISON**
ARISTIDES JURADO, **Defendant.**	:	

EXHIBIT

DEFENDANT-FATHER'S EX-PARTE MOTION FOR EMERGENCY STAY OF ORDERS AND PROCEEDINGS PENDING APPEAL

Pursuant to Civ.R. 62(B), Civ.R. 62(A), and App.R. 7(A), Defendant-Father Aristides Jurado, acting Pro Se, hereby moves this Honorable Court for an order staying portions of the Judgment and Orders issued on January 22, 2015, including the Court's finding of Contempt and sentencing of Defendant-Father to Jail time, and the upcoming purge hearing scheduled for February 12, 2015, until the Appeal filed in direct correlation to these orders is decided and until this court has had a chance to rule on Motion for Relief from Judgment regarding the same orders.

Because this contempt finding does not involve any financial obligations, Supersedeas Bond is not a pre-requisite for granting this Motion to Stay.

The reasons for this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

Defendant-Father Pro Se

By: _____

ARISTIDES JURADO
3963 Easton Way
Columbus, OH 43219
(305) 799-2212
ari_jurado@qualineconsulting.com

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MEMORANDUM IN SUPPORT OF MOTION FOR EMERGENCY STAY OF ORDERS PENDING APPEAL

REQUEST FOR STAY OF DECISIONS, ORDERS AND THEIR ENFORCEMENT

Defendant-Father Aristides Jurado, involuntarily acting Pro Se, requests this court to stay the enforcement of orders of this Court in its Entry issued and filed in this action on January 22, 2015, pursuant to Civ.R. 62(B) and App.R. 7(A). Without a Stay, Defendant-Father faces the likely loss of personal liberty through imprisonment, which will no longer have a remedy once it occurs, even if this court's orders and decisions are reversed on appeal and the case is remanded.

A. IRREVERSIBLE HARM RESULTING FROM DEPRIVATION OF CONSTITUTIONAL RIGHTS

In addition to a fundamental right to personal liberty, a substantial right is also a stake: The right to Due Process requiring fair proceedings, and whether that can be accomplished without the right to counsel. Both the U.S. Supreme Court and the Supreme Court of Ohio have established that there is no right to counsel in civil contempt proceedings (unless provided by statute), including both a Show Cause hearing as well as a Purge Hearing, but only with the condition that there are procedural safeguards[1], including a proper notice of hearing, an R.C. 2705.03 hearing meeting all of the requirements of R.C. 2705.05, an opportunity to object to the initial entry establishing payment amounts or allocating costs which are the subject of the contempt, and the opportunity to appeal the contempt finding and purge conditions. These all serve as protection for the parent being charged with contempt. In the instant case, none of the procedural safeguards have been available to Defendant, except for the latter, and these violations are also the subject of the appeal for which this Motion for Stay is conditioned upon. If the last one

[1] See *Liming v. Damos, and Turner v. Rogers* infra

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of the safeguards left—for the opportunity to appeal the contempt finding and purge conditions—to protect Defendant is denied by not granting this Motion for Stay, then the purge hearing scheduled for February 12, 2015 will take place without any of the provisions set by statute and as established by the Supreme Court of Ohio and the U.S. Supreme Court, to guarantee a fair court proceeding and the due process protections when the loss of personal liberty through imprisonment is at stake.

B. LAW AND ARGUMENT IN RESPECT TO INDIGENCY AND RIGHT TO COUNSEL

R.C. 120.03 establishes the power and duty of the Ohio Public Defender Commission to promulgate "standards of indigency and minimum qualifications for legal representation by * * * appointed counsel". R.C. 120.03(B)(1). As a result, the Ohio Public Defender Commission promulgated administrative rules under Ohio Administrative Code for establishing those standards of indigency.

> The Ohio public defender commission's standards for determining indigency status are promulgated pursuant to sections 120.03 and 120.05 of the Revised Code. Further considerations include State vs. Tymcio (1975), 42 Ohio St.2d. 39 * * * The pivotal issue in determining indigency is *not whether the applicant ought to be able* to employ counsel but whether the applicant is, *in fact, able to do so*.

(Emphasis Added.) O.A.C. 120-1-03 *Standards of Indigency.*

> If an *applicant who is not indigent* is able to show that they have tried to employ counsel, but is still *unable to employ counsel, then the court must appoint counsel* in accordance with *State vs. Tymcio* (1975), 42 Ohio St. 2d 39.

(Emphasis Added.) O.A.C. 120-1-03, division (E)

In *State vs. Tymcio*, the Supreme Court of Ohio reversed the decision by the Court of Appeals and remanded the cause back to the trial court, after determining that the trial court failed

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to "ensure that defendant was adequately represented by counsel". *State v. Tymcio*, 45 Ohio St. 2d 39. In the court opinion authored by Justice Brown, it was asserted that,

> a bare finding of non-indigency does not explain why an accused, such as the defendant in this case, who represents that he has been unable while under bond to obtain adequate counsel with his available resources because of demands for substantial cash retainers, must stand alone.

Id. at 45.

It has been well established that Defendant has made the same claims as the defendant in the *Tymcio* court multiple times in court proceedings and has been included in several of his motions, including his Emergency Motion for Removal of GAL[2] filed on February 12, 2014, Motion to Allow Appointment Of Stand-By Co-Counsel[3] filed on March 19, 2014, during the March 13, 2014 Court Hearing[4], at the court proceeding[5] on March 26, 2014, the May 12, 2014 Court Hearing[6], as well as the September 24, 2014 hearing[7] and January 22, 2015. Also, this was one of several claims raised in the Original Action case filed with the Supreme Court of Ohio.[8]

In conflict with O.A.C. 120-1-03 and the precedent set by *State v. Tymcio*, this court's Entry dated January 22, 2015, included language in respect to the finding that

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[2] See Defendant's Emergency Motion for Removal of Guardian Ad Litem, filed on Feb. 12, 2014 in the Juvenile Court Docket

[3] See Defendant's Motion to Allow Appointment Of Stand-By Co-Counsel, Mar. 19, 2014

[4] See Transcript of Court Proceeding – Hearing for Emergency Motion to Remove Guardian Ad Litem, Mar. 13, 2014

[5] See Transcript of Court Proceeding – Pre-Trial Hearing for Miscellaneous pending Motions and Matters in front of Magistrate, Mar 26, 2014

[6] See Transcript of Court Proceeding – Hearing for Motion to Stay (by Judge), May 12, 2014

[7] See Transcript of Court Proceeding – Hearing for Motion to Remove GAL that turned into Show Cause Hearing, Sep. 24, 2014

[8] See Exhibit SCO-2, which includes a filing with the Supreme Court of Ohio: Motion for Alternative Writ and Emergency Stay; Also Exhibits SCO-N and SCO-O include supplement filings all dated July 22, 2014. This motion includes, among other allegations, facts and arguments demonstrating the misconduct and malice of opposing counsel and party, such as Mom's first Motion To Show Cause that was filed with malice and in bad faith, with the intent to harass and intimidate.

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> The Court finds that Defendant had an opportunity to secure private counsel but has chosen to proceed pro se. * * * The Court had him screened for court appointed counsel. His annual income was listed at $120,000.00 per annum for a one person household. Based upon the poverty scale, Mr. Jurado's income far exceeds the guidelines for appointment of court appointed counsel. *Mr. Jurado has also purchased or had someone purchase the transcripts of each hearing. He has used his funds to purchase transcripts rather than using his assets to hire counsel to represent him.* The Court has fully explored the issue of whether Mr. Jurado qualifies for court appointed representation for the contempt hearing. The Court finds that Mr. Jurado does not qualify for court appointed representation in this matter.

Franklin County CPC, Juvenile Court's Entry[9] dated January 22, 2015, pages 1-2. The screening for court appointed counsel this court refers to in the above entry is solely based on the fact that Defendant completed and submitted an affidavit of indigency. There is not a trace of evidence or indication on the record to support the findings of fact in the January 22, 2015 entry. In fact, the record shows that Defendant offered evidence to the court that he did not use his funds directly or through 3rd parties to purchase transcripts, but the Court did not allow the presentation of those exhibits stating that they are irrelevant because it did not matter if Defendant borrowed the funds or where they came from. **The assertions in the January 22, 2015 entry—which are truly unverified allegations—imply that even the Catholic Church, the Dioceses of Columbus, and St. Vincent de Paul Society are involved in an dishonest scheme with Defendant.** Given that there is no reflection in the record that an investigation was undertaken by the court, or an attempt was made to identify the circumstances under which Defendant Jurado was still unable to retain

[9] See Journal Entry and Court Order finding Defendant in Contempt, January 22, 2015

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counsel, this court's bare findings of indigency alone should be construed as this Court's "failure to ensure that defendant was adequately represented by counsel". *Tymcio, supra,* at 45.

C. LAW AND ARGUMENT IN RESPECT TO IRREVERSIBLE CONSTITUTIONAL CLAIMS

In *Liming v. Damos*, 2012-Ohio-4783, the Supreme Court of Ohio established the rules or conditions on which a civil-contempt purge hearing is deemed to be a fundamentally fair proceeding as required by due process without the need to guarantee the right to appointed counsel.

> Although the loss of personal liberty through imprisonment is an important consideration, the Supreme Court nonetheless found that other factors outweigh that private interest and held that, "the Due Process Clause does not automatically require the provision of counsel at civil contempt proceedings * * * In particular, that Clause does not require the provision of counsel *where* *the opposing parent * * * **is not represented by counsel*** and *the* *State provides **alternative procedural safeguards*** equivalent to those we have mentioned (adequate notice of the importance of ability to pay, fair opportunity to present, and to dispute, relevant information, and court findings)."

(Emphasis Added.) *Liming v. Damos*, 133 Ohio St.3d 509, 2012-Ohio-4783, at ¶ 27, citing the opinion of the U.S. Supreme Court in *Turner v. Rogers*, __ U.S. __, 131 S.Ct. 2507, 180 L.Ed.2d 452 (2011), at 2520.

In Liming, the Court went further to use the Mathews v. Eldridge balancing test, in which one of the factors determines the risk that, in this case, the upcoming purge hearing will lead to an erroneous decision. The court found that to be unlikely, but only if for the first Contempt proceeding,

> the parent will have been given notice of the hearing date, the right to counsel if indigent, and the potential penalties. R.C. 2705.031(C). At that

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> initial contempt hearing, the parent will have had the opportunity to defend against the contempt charges and otherwise *object to or appeal from a finding of contempt and any purge conditions* * * * Liming was represented by an attorney at the contempt hearing in October 2008. Neither he nor his counsel objected to the magistrate's decision or otherwise appealed the contempt order. * * * The risk of the court's reaching an *erroneous decision at the purge hearing, therefore, was minimal*.

(Emphasis Added.) *Id.* at ¶ 30.

Given that (1) Plaintiff-Mother has been represented—not by one, but—by two attorneys until recently, and the former-GAL may count as a third counsel for her as well, (2) the procedural safeguard of adequate notice was lacking, (3) Defendant was precluded from the procedural safeguard of a fair opportunity to present, and to dispute, (4) the show cause hearing was conducted in a manner not authorized by law, based on R.C. 2705.05 and the stipulation that "At the hearing, the court shall investigate the charge and hear ***any*** *answer or testimony* that the accused makes or offers". (Emphasis added.) R.C. 2705.05(A). it can be clearly concluded that those procedural safeguards have not been offered to Defendant.

SUMMARY AND CONCLUSION

The claim Defendant makes here is that, if the above condition of the opportunity to "appeal from a finding of contempt and any purge conditions" does not take place before the purge hearing, the risk of an erroneous decision at the purge hearing increases significantly, and the unwarranted loss of personal liberty could take place, with no adequate remedy after the fact.

Because the Plaintiff in this case will not sustain any harm whatsoever if the proceedings for the Purge hearing get delayed, and because the suspension of parenting time for Defendant is no longer associated with the compliance/purge hearing (as this court stated that "maybe at the end of trial the suspension will be lifted"), it can be said that the balance of harms weights substantially in favor of Defendant.

For all the reasons stated above, and for the proper carriage of justice, this court should grant Defendant's Motion for Emergency Stay.

Respectfully submitted,

Defendant-Father Pro Se

By: _____

ARISTIDES JURADO
3963 Easton Way
Columbus, OH 43219
(305) 799-2212
ari_jurado@qualineconsulting.com

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

KATHY HERNANDEZ,	:	CASE NO. 12-JU-11-14479
Plaintiff-Mother,	:	
-vs-	:	JUDGE JAMISON
ARISTIDES JURADO,	:	
Defendant-Father.	:	

AFFIDAVIT OF DEFENDANT-FATHER ARISTIDES JURADO
FOR VERIFICATION OF HIS MOTION FOR STAY OF ORDERS PENDING APPEAL

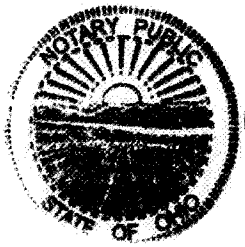
State of Ohio
County of Franklin SS.

Now comes Aristides Jurado as the Affiant herein and having been duly sworn and cautioned deposes and states that he is the Defendant in the foregoing action, that he has reviewed the foregoing motion, and that the facts and allegations stated therein are true to the best of his knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.

Aristides Jurado

SWORN to before me and subscribed in my presence this 5th day of February, 2015.



TIA THOMAS
Notary Public, State of Ohio
My Commission Expires
May 04, 2015

Notary Public/Deputy Clerk

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served was served via the court's electronic filing system on this 6th day of February, 2015, and via direct email to:

Erika Smitherman
Ronald R. Petroff
Petroff Law Offices, LLC
140 E. Town Street, Suite 1070
Columbus, Ohio 43215
Attorneys for Plaintiff

Thomas M. McCash, Esquire
55 S. High St. Suite 210
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tmccash@columbus.rr.com
Guardian Ad Litem

Defendant-Father Pro Se

By: _____

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EXHIBIT

IN THE FRANKLIN COUNTY COMMON PLEAS COURT
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

KATHY HERNANDEZ Plaintiff	]	Case No. 12 JU 14479
-vs-	]	**JUDGE JAMISON**
ARISTIDES JURADO Defendant.	]	

ENTRY

On January 22, 2015, this matter came before the Court on the Guardian *ad litem's* Motion for Contempt against Defendant filed on January 5, 2015 and Objections filed by Defendant on January 22, 2015. The Court heard argument on the Objections and **OVERRULLES** the objections.

The Court conducted a full hearing on the Motion for Contempt, hearing testimony from the Defendant and the Guardian *ad litem.* Service of the contempt motion was perfected upon the Defendant and the Court finds that Defendant had an opportunity to secure private counsel but has chosen to proceed *pro se.*

Prior to taking testimony, Mr. Jurado objected to proceeding without court appointed counsel. He alleged that the Court has not inquired into his ability to pay. The Court had him screened for court appointed counsel. His annual income was listed at $120,000.00 per annum for a one person household. Based upon the poverty scale, Mr. Jurado's income far exceeds the guidelines for appointment of court appointed counsel. Mr. Jurado has also purchased or had someone purchase the transcripts of each hearing. He has used his funds to purchase transcripts rather than using his assets to hire counsel

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to represent him. The Court has fully explored the issue of whether Mr. Jurado qualifies for court appointed representation for the contempt hearing. The Court finds that Mr. Jurado does not qualify for court appointed representation in this matter. Therefore, the Court **OVERRULES** the objection.

Pursuant to the December 18, 2014 court order the Defendant was ordered to provide HIPPA releases to the Guardian *ad litem* by December 28, 2014 at 12:00 noon. Based on the testimony the Court finds Defendant, Aristides Jurado, in contempt for failure to comply with the December 18, 2014 order. The Court further finds that Mr. Jurado exchanged two HIPPA releases but he testified there were five providers.

Mr. Jurado testified that he placed the additional releases in the Guardian ad litem's office mailbox but that's where the controversy lies. The Guardian ad litem notified Mr. Jurado that he did not receive the releases on more than one occasion. In fact Mr. Jurado testified that he did receive the emails from the Guardian ad litem. The Court further finds that at no time, after Mr. Jurado became aware that the Guardian ad litem did not find the releases in the mailbox, did Mr. Jurado make attempts to exchange the releases. The Court convened with the trial in this case on January 12, 2015 which continued on January 14, 2015, January 15, 2015 and January 20, 2015, all prior to the contempt hearing today. At no time prior to today did Mr. Jurado exchange the HIPPA releases with Mr. McCash, the Guardian ad litem, or opposing counsel.

Mr. Jurado has exchanged no witness lists nor a trial notebook for the ongoing trial. Mr. Jurado has continually failed to comply with the Court's orders with respect to the exchange of documents and other discoverable information.

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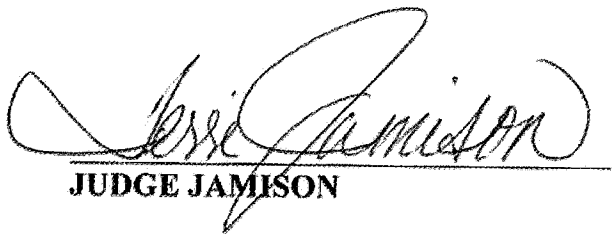
After hearing all evidence, the Court finds Defendant Jurado in contempt of Court pursuant to the allegations in the Motion filed January 5, 2015. Defendant is sentenced to ten (10) days at the Franklin County Correction Center. The enforcement of incarceration is suspended on the condition that he purge the contempt by providing the documents by January 30, 2015 in compliance with the December 18, 2014 Court Order. Defendant is hereby ordered to pay $360.00 to the Guardian ad litem for the prosecution of the motion.

The Court sets the matter for review of compliance **February 12, 2015, at 9:00 am in Courtroom 65.**

Any exhibits will be held by the Court reporter on the 3rd Floor of 373 S. High Street, Columbus, Ohio 43215.

IT IS SO ORDERED.



JUDGE JAMISON

PRAECIPE: TO THE CLERK OF COURTS
Pursuant to Civil Rule 58(B), you are hereby instructed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal in the manner prescribed by the attached instructions for service.

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Court Disposition

Case Number: 12JU014479

Case Style: KATHY J HERNANDEZ -VS- ARISTIDES JURADO

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 12JU014479002015-01-0599980000
   Document Title: 01-05-2015-MOTION FOR CONTEMPT
   Disposition: MOTION GRANTED

In the
Supreme Court of Ohio

THE STATE *ex rel.* ARISTIDES JURADO Relator, v. FRANKLIN COUNTY COURT OF COMMON PLEAS, DOMESTIC RELATIONS DIVISION, JUVENILE BRANCH, *et. al.*, Respondents.	:	Case No. _____ ORIGINAL ACTION IN MANDAMUS

AFFIDAVIT OF VERIFICATION OF RELATOR ARISTIDES JURADO FOR PETITION OF WRIT OF MANDAMUS

STATE OF OHIO
COUNTY OF FRANKLIN, SS.

I, Aristides Jurado, being duly sworn, state under penalty of law that the following is true:

1. I am a resident of the State of Ohio, County of Franklin, and the defendant party in Case Number 12JU-11-14479 of the Franklin County Common Pleas

Court, Domestic Relations Division, Juvenile Branch, and Appellant in Appeals number 15-AP-0026 and 15-AP-0080 of the Tenth District Court of Appeals.

2. I have reviewed each and every line in the foregoing complaint for a writ of mandamus and prohibition.

3. I have personal knowledge of all the matters alleged in the complaint..

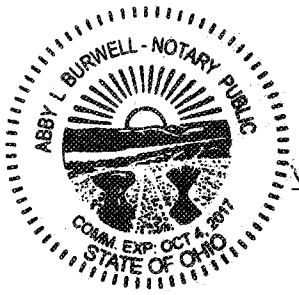
4. The facts and allegations contained in the foregoing complaint are true; and

FURTHER AFFIANT SAYETH NAUGHT.

Aristides Jurado

SWORN to before me and subscribed in my presence this

11th day of February, 2015.



Notary Public