

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE
COUNTY JUVENILE COURT; SUE E. RADULOVICH, P.C.;
SUE E. RADULOVICH, as Next Friend of NADIA E., a
Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE
P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as
Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD;
MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a
Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of
NAOMI S., a Minor; JEREMY BRAND, as Next Friend of
KYISHIA R., a Minor, JEREMY BRAND, as Next Friend
of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY,
as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY,
as Next Friend of WILLIAM and WESLEY D., Minors;
PATRICK DEVINE; PATRICK DEVINE, as Next Friend of
JUSTIN S., on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

Case No.
Hon.

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIAL CIRCUIT COURT, jointly and severally,

-ORAL ARGUMENT REQUESTED-

Defendants.

JULIE H. HURWITZ (P34720)
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COMPLAINT FOR SUPERINTENDING CONTROL

INTRODUCTION

NOW COME Plaintiffs, Trial Lawyers Association of Wayne County Juvenile Court,
Sue E. Radulovich P.C.; Sue E. Radulovich, as Next Friend of Nadia E., a minor; Sue E.
Radulovich, as Next Friend of Tommie P., a minor; Deborah Trent; Deborah Trent, as Next
Friend of Tony B., A Minor; Muriel Shillingford; Muriel Shillingford, as next friend of Kimberly

S., a minor; Jeremy Brand; Jeremy Brand, as Next Friend of Naomi S., a minor; Jeremy Brand, as Next Friend of Kyishia R., a minor; Jeremy Brand, as next Friend of Terri N., a minor; Sydney L. Ruby; Sydney L. Ruby, as Next Friend of Clarence S., a minor; Sydney L. Ruby, as Next Friend of William and Wesley D., minors; Patrick Devine; Patrick Devine, as Next Friend of Justin S., on behalf of themselves and all others similarly situated, by their attorneys, JULIE H. HURWITZ, P.C., and bring this original action for superintending control before the Michigan Supreme Court, pursuant to its authority under the Michigan Constitution, Art. 6, Secs.1 and 4, MCLA 600.219, and MCR 3.302, seeking an Order of Superintending Control directed to Defendants Third Circuit Court and Chief Judge Mary Beth Kelly, in her official administrative capacity, (“Defendant Court”) ordering them to rescind and repeal §§ III.A and III.D of Local Administrative Order 2006-08 (“LAO 2006-08”), insofar as said provisions violate the statutory and constitutional rights of Plaintiffs and all others similarly situated, and further to reinstate Plaintiff Attorneys, and all others similarly situated, as counsel/lawyer guardians ad litem for Plaintiff Children and all others similarly situated.

1. This is an original action for superintending control on behalf of Plaintiff Children, through their Next Friends, and all children who are now or who will be under the jurisdiction of the Wayne County Circuit Court, Family Division, Juvenile Section, as parties in child protective and/or delinquency proceedings and who are entitled to assignment of counsel, including as Lawyers Guardians Ad Litem, (“Plaintiff Children”), and on behalf of all attorneys who now do or who have represented Plaintiff Children as assigned counsel and/or Lawyers Guardians Ad Litem (“Plaintiff Attorneys”).

2. This action challenges the constitutionality and lawfulness of the general practice of the Wayne County Circuit Court, Family Division Juvenile Section, through the issuance and implementation of LAO 2006-08, of denying indigent children their constitutional and statutory

rights to effective assistance of counsel, to the constitutionally required resource of continuous, and thereby effective, ongoing attorney-client relationships. This action likewise challenges the very same practice as it affects the ability of the attorney Plaintiffs to effectively function as appointed individual attorneys to represent their juvenile clients, both as Lawyers Guardians Ad Litem (hereinafter “LGAL”) in child protective cases and as defense counsel in delinquency cases.

3. This action also challenges the constitutionality and lawfulness of the Defendant Court’s removal of the aforementioned lawyers without a hearing or showing of good cause on the record, constituting an interference with Plaintiff Attorneys’ and Plaintiff Children’s ongoing attorney-client relationships and a violation of the Plaintiff Children’s statutory and constitutional due process rights to effective assistance of counsel.

4. In 2005, there were more than 20,000 children under the jurisdiction of the Wayne County Circuit Court Family Division, Juvenile Section, either as subjects of abuse and neglect/child protective (hereinafter “child protective”) and/or delinquency proceedings, according to statistics filed with the Supreme Court Administrator’s Office by Defendant in the *2005 Annual Report, Third Judicial Circuit Court of Michigan*. [Exh. 21]. Each one of these children is entitled to vigorous, consistent and effective representation by counsel. Based on the demographic population of Wayne County, Michigan, approximately 80% of these children are African American. [Exh. 34, Affidavit of Trent].

5. Defendant’s “Plan for Assignment of Counsel in the Family Division, Juvenile Section,” as set forth in LAO 2006-08, replaces the individual attorney assignment system -- where hundreds of individual qualified private attorneys were assigned by the court and paid under a Supreme Court-approved uniform specific pay schedule -- with a contract system, whereby select “groups,” either nonprofit corporations or private lawyer groups, are being

awarded multi-million dollar lump sum contracts to “provide exclusive representation for juveniles in both delinquency and child protective proceedings...” [Exh. 1, LAO 2006-08, p. 5]. That “group,” in turn, employs or sub-contracts with other attorneys with no supervision by or involvement from the court.

6. These contracts have been and continue to be awarded based on the “sole and exclusive discretion” of Defendant Chief Judge, with each contract proposal being accorded “...such weight...as the Court deems to be in its best interests...” rather than what is in the children’s best interest, with one of the articulated factors identified as: “The provision of services...at the lowest overall cost.” [Exh. 2, Request for Proposal, §§ III.D.2 and 3].

7. Under the new “Plan,” LAO 2006-08, the Defendant Chief Judge has discretionary authority to arbitrarily remove properly appointed counsel/LGALs, including Plaintiff Attorneys, from their cases, without hearing or notice, in violation of statutory and constitutional prohibition against interference with existing attorney-client relationships, without good cause shown on the record.

8. This new system, as mandated by LAO 2006-08, will result in substantially fewer attorneys being available to represent more children, in an already overloaded docket. It will result in those attorneys as sub-contractors, being paid “flat fees” per year to cover all cases arising during that contract period, which will inevitably be unreasonably low on a per client basis. Also, such a system will inevitably create a financial disincentive for appointed counsel to allocate funds to necessary items such as training, legal research tools, investigative work and other aspects of adequate representation.

9. As a direct result of the issuance of LAO 2006-08, all Plaintiff Children who are under the jurisdiction of the court by virtue of being involved in child protective proceedings have been, and will continue to be, deprived of their ongoing attorney-client relationships.

Defendant's arbitrary removal of LGALs and appointed counsel, without notice, consent or good cause shown on the record has caused, and will continue to cause unless this Court intervenes, the violation of children's statutory and constitutional rights to individual and consistent representation and to effective assistance of counsel.

10. Also as a direct result of the issuance of LAO 2006-08, all Plaintiff Children who are under the jurisdiction of the court by virtue of delinquency proceedings, have been, and will continue to be, deprived of their right to demand that their cases be heard by a judge and to a jury trial as the result of the arbitrary order prohibiting their assigned counsel from making such a demand at their Preliminary Hearings, in violation of their statutory and constitutional rights to effective assistance of counsel. [**Exh. 19, "Notice re: Judge Demands"**].

11. Plaintiff Children are also deprived of their rights to have individual attorneys assigned to represent them, and instead are being assigned to "legal groups," with no individual attorneys from that group specifically designated as their defense counsel or their LGAL. Consequently, these children, who have a fundamental right to effective assistance of counsel, are left with no one to whom they can turn to effectively represent their interests. They are also subjected to the increased risk of the existence of a conflict of interest between different individual members of the appointed "legal group" assigned to represent the interests of the respective individual children.

12. The Defendant's policy and practice of arbitrary and unlawful disruption of attorney-client relationships violates Plaintiff Children's statutory and constitutional rights to effective assistance of counsel in protection and delinquency proceedings. In addition, after these relationships have been unlawfully terminated, the Defendant's policies and practices require that the Plaintiff Children's files be turned over to court personnel and/or unnamed substitute counsel, in violation of law.

JURISDICTION AND VENUE

13. This Court has original subject matter jurisdiction over this matter pursuant to Michigan Constitution, Art. 6, Secs.1 and 4, MCLA § 600.219, and MCR 3.302.

14. This action is brought pursuant to the above-cited laws governing this Court's superintending control authority to redress violations of the 5th and 14th Amendments of the United States Constitution. It is brought, in addition, to redress violations of the Michigan Constitution, Art. 6, §§ 1 and 4, and Art. 1, §§2 and 17; and the Michigan Juvenile Code, *inter alia* MCLA §§ MCLA §§ 712A.1(3), 712A.4(4), 712A.13a(c), 712A.13a(g), 712A.13b(6), 712A.17(1)(b), 712A.17c(2), 712A.17c(7), 712A.17c(9), 712A.17c(10), 712A.17d, 712A.18f(3); 712A.19a(6) and 712.17.19b.

PARTIES

15. **Plaintiff Trial Lawyers Association of Wayne County Juvenile Court** (**hereinafter "TLAWCJC"**), is a professional association of attorneys who specialize in the representation of juveniles and families in the Family Division – Juvenile Section of the Wayne County Circuit Court. The TLAWCJC was formed in 1988, for the specific purpose of providing professional training and support to its membership, to promote improvements in the administration of justice and advancements in jurisprudence, to improve relations between the legal profession and the public and to promote the interests of the local legal community particularly at the Wayne County Circuit Court Family Division Juvenile Section. The TLAWCJC currently has approximately one hundred (100) dues paying members.

16. The TLAWCJC represents the interests of its members and the hundreds of other private juvenile court practitioners who currently represent juveniles as assigned counsel in both child protective and delinquency cases in the Third Circuit Court Family Division Juvenile Section and who are being arbitrarily removed from said representation, interfering with the

ongoing attorney-client relationships that have been in effect.

17. The membership of TLAWCJC, as well as all of the individually named and identified Plaintiff Attorneys herein, has a current and actual economic interest in the cases from which they are being unlawfully and unconstitutionally removed. As a result of the Defendants' actions, the membership of TLAWCJC, as well as all of the individually named and identified Plaintiff Attorneys herein, will suffer real and actual economic loss and injury.

18. As a proximate, direct and immediate result of Defendants' wrongful conduct, herein, including but not limited to the enactment and promulgation of LOA 2006-08, the Plaintiff TLAWCJC has been burdened with numerous time and resource consuming duties and responsibilities that have been imposed on it due to its special and particular relationship with its members. These additional responsibilities have included:

- a) Additional and extensive communication and coordination of communication;
- b) Advocacy on behalf of it's members, individually and collectively;
- c) Education and outreach to its members with regard to the substance and procedural details of the Defendant's new policies; and
- d) Education and outreach to its membership with regard to its ethical obligations and pitfalls: e.g. the ways in which the policies of the Defendant have created ethical compromises and endangered the attorneys ability to practice their profession, for the attorneys with regard to maintaining communication with clients, keeping a client apprised as to the status of his or her case, and the requirement that the lawyer take protective actions on behalf of clients who are unable to protect their own interest due to said client's minority.

19. The burdens described above have in the recent past, and will continue in the future, to impose a substantial drain on the resources of Plaintiff TWALCJC.

20. The TLAWCJC also represents the interests of its members and the hundreds of other private juvenile court practitioners who, as the result of Defendant Court's issuance of LAO 2006-08, are no longer eligible for assignment as counsel and/or LGALs for juveniles in the Third Circuit Court Family Division Juvenile Section as the direct result of the implementation of Defendant's LAO 2006-08.

21. Plaintiff **Sue E. Radulovich P.C.** is an attorney licensed to practice law in the State of Michigan since 1981. Plaintiff Attorney Radulovich is a member of TLAWCJC, and has, for the past twenty-five (25) years, specialized in the representation of juveniles and parents in child protective cases and juveniles in delinquency cases, primarily in Wayne County, Michigan. She has, over the course of her professional career, represented more than a thousand minor children as LGAL in more than a thousand child protective cases.

22. Plaintiff **Attorney Radulovich** is and has been at all relevant times qualified for assignment as counsel for indigent children in the Third Circuit Court Family Division-Juvenile Section, pursuant to LAO 2006-08, Section III.B. **[Exh. 1]**.

23. As of November 20, 2006, Plaintiff Attorney Radulovich represented approximately 63 minor children as LGAL in approximately 38 child protective and/or delinquency cases. These have included minor Child Plaintiffs Nadia E and Tommie P. Twenty-three (23) of those cases, (22 child protective and one (1) delinquency), on behalf of 35 minor children, were pending in front of referees within the Wayne County Circuit Court Family Division Juvenile Section.

24. Starting on or about November 20, 2006, Plaintiff Attorney Radulovich received, and since then has continued to receive, generic Orders of Removal of Assigned Counsel, with a computer-generated signature purporting to be that of Defendant Chief Judge Kelly, on all of her child protective cases, including minor Child Plaintiff Nadia E, **[Exh. 6, Order of Removal**

dated November 20, 2006], and minor Child Plaintiff Tommie P, [**Exh. 7, Order dated February 13, 2007**] which are pending before referees (as opposed to judges), as well as on one of her delinquency cases which is also pending before a referee. In these orders, she was also ordered to turn over her files on said cases to the unnamed counsel who were allegedly to replace her, notwithstanding her protected property interest in those files and ethical obligations to her clients.

25. On or about April 5, 2007, Attorney Plaintiff Radulovich received 36 e-mails from Defendant Court, each with an “Order of Removal of Assigned Counsel and Appointment of New Counsel” attached, all effective as of April 9, 2007, removing her as counsel, without notice or good cause, for all the remaining children she had represented either as LGAL or as appointed counsel in child protective and delinquency cases before referees.

26. **Minor Plaintiff Nadia E** is a minor child, currently 16 years old and has, since 2004, been represented by Plaintiff Attorney Radulovich as her LGAL, (now her Next Friend) until November 20, 2006, when Defendant Chief Judge Kelly issued a computer generated Order of Removal of Assigned Counsel [**Exh. 6**], replacing Nadia E’s actual LGAL with an unnamed and unidentified counsel, identified only as “Legal Aid and Defender Association,” (LADA).

27. The following facts pertain to Minor Plaintiff Nadia E:

- a) Since 2004, she has been under the jurisdiction of the Family Division Juvenile Section of the Third Circuit Court in a child protective proceeding, Case No. 04-433702, as the result of having been chained in her parents’ basement, beaten and deprived of food and water;
- b) From the time that Plaintiff Attorney Radulovich was first appointed as her LGAL, the child, Plaintiff Nadia E needed hours of comfort, advice, consultation, attention and encouragement, which she in fact received from Plaintiff Radulovich

and has resulted in the development of a relationship of trust, support and comfort between the two;

c) Over the course of her representation of Minor Plaintiff Nadia, Plaintiff Attorney Radulovich has, among other things: visited with her at least 15 times; had regular telephone contact with her; successfully defeated an effort to remove Radulovich as her LGAL in 2004; successfully defeated an attempt by her parents to have her deported; represented her interests at the parental termination trial in early 2005; has appeared at every 90-day hearing on her behalf; and has actively participated in the investigation of, and ultimate placement with, her current fictive family with whom she now lives;

d) Both Minor Plaintiff Nadia E and her current fictive family have continuously turned to Plaintiff Attorney Radulovich for assistance and guidance;

e) At the last hearing, on November 20, 2006, at which Plaintiff Attorney Radulovich appeared and was removed by Defendant Kelly as Nadia's LGAL, Minor Plaintiff Nadia stated on the record that she did not want her attorney-client relationship with her LGAL to end;

f) As of the filing of this Complaint, no one on behalf of Legal Aid and Defender Association has identified him/herself as the individual LGAL on behalf of Minor Plaintiff Nadia E, nor has anyone contacted either the minor Plaintiff or the former LGAL/current Next Friend Plaintiff Radulovich, to introduce him- or herself, or to learn any of the history of Plaintiff Nadia E's case and situation.

28. **Minor Plaintiff Tommie P** is a minor child, currently five (5) years old and has, since 2004, been represented by Plaintiff Attorney Radulovich as his LGAL, (now his Next Friend). On February 13, 2007, Defendant Chief Judge Kelly issued a computer generated Order

of Removal of Assigned Counsel [**Exh. 7**], which replaced Tommie's individual LGAL, Radulovich, with an unnamed and unidentified counsel, identified only as "Legal Aid and Defender Association," LADA.

29. The following facts pertain to Minor Plaintiff Tommie P:

- a) Since 2004, he has been under the jurisdiction of the Family Division Juvenile Section of the Third Circuit Court in a child protective proceeding, Case No. 04-434314, as the result of his mother's mental illness and inability to care for him;
- b) Throughout the course of her representation of Minor Plaintiff Tommie P, leading up to and including the termination of his mother's parental rights, Plaintiff Attorney Radulovich appeared at every hearing and at the parental termination trial on his behalf, vigorously representing his best interests;
- c) Minor Plaintiff Tommie P currently resides with his maternal uncle, where Plaintiff Attorney Radulovich has visited him as required, and who is planning to adopt him;
- d) As of the filing of this Complaint, no one on behalf of Legal Aid and Defender Association has identified themselves as the individual LGAL on behalf of Minor Plaintiff Tommie P, nor has anyone contacted either the minor Plaintiff or his former LGAL/current Next Friend Plaintiff Radulovich, to introduce him- or herself, or to learn any of the history of Plaintiff Tommie P's situation.

30. **Plaintiff M. Deborah Trent** is an attorney licensed to practice law in the State of Michigan since 1982. Ms. Trent is a member of TLAWCJC and has, since 1985, specialized in the representation of juveniles in child protective and delinquency matters, including in Wayne County, Michigan. She has, since 1985, represented more than 1000 minor children as LGAL in child protective cases, including Minor Plaintiff Tony B, and as appointed counsel in

delinquency cases.

31. Plaintiff Trent is and has been at all relevant times qualified for assignment as counsel for indigent children in the Third Circuit Court Family Division-Juvenile Section, pursuant to LAO 2006-08, Section III.B. **[Exh. 1]**.

32. As of October, 2006, Plaintiff Attorney Trent was LGAL and appointed counsel in more than 60 child protective and/or delinquency cases, representing more than 85 children, when Defendant started issuing Orders of Removal on her cases, including her client's Plaintiff Tony B, without a showing of good cause on the record and notwithstanding her protected property interest in those files and ethical obligations to her clients.

33. As of the date of the filing of this Complaint, Attorney Plaintiff Trent has been removed from every one of the cases in which she was representing children before referees, including the nineteen (19) most recent group of "Orders of Removal and Appointment of New Counsel" received via email from Defendant Court on or about April 5, 2007, effective as of April 9, 2007. **[Exh. 34, Affidavit of Trent, ¶10]**

34. **Plaintiff Tony B** is a minor child, currently 17 years old, under the jurisdiction of the Family Division Juvenile Section of the Third Circuit Court in a child protective proceeding, Case No. 00-386361, and has, along with his younger brothers Antoine, 15 years old, and Carleton, 14 years old, for the past seven (7) years been represented by Plaintiff M. Deborah Trent as his Lawyer Guardian Ad Litem (hereinafter "LGAL"), (now his Next Friend) until November 28, 2006, when Defendant Chief Judge Kelly issued an Order of Removal of Assigned Counsel **[Exh. 8]**, replacing their individual LGAL with an unnamed counsel, identified only as "Michigan Children's Law Center," MCLC.

35. The following facts pertain to Minor Plaintiff Tony B and his brothers:

- a) For the past seven (7) years, Plaintiff Attorney Trent has had regular and

consistent contact with Minor Plaintiff Tony B and his siblings, on at least a monthly basis.

b) Plaintiff Trent has consistently appeared at virtually all of the hearings.

c) Between November 28, 2006, when Plaintiff Trent was officially removed as LGAL for minor Plaintiff Tony B, and January 22, 2007, there have been ongoing crises regarding both minor Plaintiff Tony B's school and his foster placement, resulting in a 45-day suspension from school and jeopardizing his current placement with his foster mother.

d) Minor Plaintiff Tony B's younger siblings, Antoine and Carleton, have been institutionally placed in Paul Martin Home for Boys for the past five (5) years and have been recently recommended for relocation to Therapeutic Foster Home placements. However, to date, no action has been taken to get these children placed as recommended. Without pro-active intervention by an LGAL who is aware of and understands this history, no action is likely to be taken. Plaintiff Trent, until her removal as LGAL for these children, actively pursued this recommendation, because it is in the best interest of the minor children. No person connected with her replacement as LGAL, (unnamed attorney(s) from "MCLC"), has made any effort to learn about this history, which is not reflected in the children's Foster Care Worker Court Reports from Plaintiff Trent, and therefore not publicly available.

e) Despite the fact that Plaintiff Trent is no longer officially representing Minor Plaintiff Tony B or his siblings, he continues to rely on her as his primary source of support, second only to his current foster mother, and Plaintiff Trent continues promote Tony B's interests because of her longstanding relationship with him as his LGAL, because of her professional/ethical responsibilities and because Minor

Plaintiff has never been notified who his current LGAL is, leaving him essentially abandoned and unrepresented.

f) As of the filing of this Complaint, no one on behalf of MCLC has identified themselves as the individual LGAL on behalf of Minor Plaintiff Tony B, nor have they contacted either the minor Plaintiff or the former LGAL Plaintiff Trent, to introduce him- or herself, or to learn the history of Plaintiff Tony B's situation or that of his sibling.

36. **Plaintiff Muriel Shillingford** is an attorney licensed to practice law in the State of Michigan since 1992. Ms. Shillingford is a member of TLAWCJC and has, for the past ten (10) years, specialized in the representation of both parents and juveniles in child protective matters and juveniles in delinquency matters, in Wayne County, Michigan. She has, over the course of her professional career, until January 2007, represented several hundred minor children as both LGAL in child protective cases, including Minor Plaintiff Kimberly S, and as appointed counsel in delinquency cases, in Wayne County Circuit Court, Juvenile Section.

37. Plaintiff Shillingford is and has been at all relevant times qualified for assignment as counsel for indigent children in the Third Circuit Court Family Division-Juvenile Section, pursuant to LAO 2006-08, Section III.B. **[Exh. 1]**.

38. As of January 18, 2007, Plaintiff Shillingford had a combined caseload of more than 40 children, including child protective and delinquency cases, as appointed counsel in the Juvenile Section, when Defendant started issuing Orders of Removal on said cases, including Minor Plaintiff Kimberly S' case, without a hearing and without good cause shown on the record, and ordered her to turn over her files on said cases to unidentified and unnamed counsel who were purportedly to replace her, thereby interfering with her lawfully protected attorney-client relationships and her property interest in her files with respect to those relationships.

39. On or about April 5, 2007, Attorney Plaintiff Shillingford received 19 e-mails from Defendant Court, each with an “Order of Removal of Assigned Counsel and Appointment of New Counsel” attached, all effective as of April 9, 2007, removing her as counsel, without notice or good cause, for all the remaining children she had represented either as LGAL or as appointed counsel in child protective and delinquency cases before referees. **[Exh. 33, Affidavit of Shillingford, ¶16]**

40. **Minor Plaintiff Kimberly S** is a minor child, currently 16 years old, under the jurisdiction of the Family Division Juvenile Section of the Third Circuit Court in a child protective proceeding, Case No. 98-369166, and has, since 2005, been represented by Plaintiff Muriel Shillingford as her LGAL, (now her Next Friend) until January 18, 2007, when Defendant Chief Judge Kelly issued an Order of Removal of Assigned Counsel **[Exh. 9]**, replacing her actual individual LGAL with an unidentified and unnamed counsel, identified only as “Michigan Children’s Law Center,” MCLC.

41. The following facts pertain to Minor Plaintiff Kimberly S:

- a) Since 1998, at various times within her life, she became the subject of child protective petitions and came under the jurisdiction of the court;
- b) Since 2003, she has had at least five (5) different LGAL’s, not including Plaintiff Shillingford, appointed to represent her interests;
- c) Plaintiff Shillingford was appointed as her LGAL on June 2, 2005;
- d) Plaintiff Kimberly S has significant and serious mental health problems, resulting in her institutionalization on several occasions;
- e) As a consequence of her neglect, her alleged victimization and her mental illness, Minor Plaintiff Kimberly S has difficulty establishing a trusting relationship with adults. The appointment and substitution several different attorneys, appointed to

represent her as her LGAL between 2003 and 2005, has exacerbated her already fragile and unstable mental condition;

f) During the time that Plaintiff Shillingford has been her LGAL, between June 2005 and the present time, she visited with Kimberly S at least three (3) times at the Pine Rest facility in Port Huron and met with her at least eight (8) times at the court, immediately prior to each of the court hearings at which Plaintiff Shillingford appeared on her behalf;

g) Plaintiff Shillingford has appeared at almost every court hearing on Kimberly's behalf, except for two hearings, near the beginning of her representation during the summer of 2005, for which she obtained express permission from Referee Pillette to have substitute counsel appear, and made sure that the substitute counsel was fully apprised of Kimberly's situation pursuant to the requirements of MCR 3.915(D)(2);

h) During the time that Plaintiff Attorney Shillingford was her LGAL, she also spoke by telephone with Plaintiff Kimberly S's psychiatric team, including nurses, case managers and therapists, numerous times, and intervened on her behalf at least twice during the course of her psychiatric treatment at the psychiatric facility;

i) Despite Kimberly's difficulties establishing a trusting relationship with adults, her mental and emotional problems and the generally recognized unique vulnerabilities of abused and neglected children, Plaintiff Kimberly S had begun to bond with Plaintiff Shillingford after two (2) years of continuous contact, the disruption of which will now quite likely undermine the progress she has begun to make;

j) As of January 18, 2007, with the support of her LGAL, now Next Friend, Plaintiff Shillingford, Plaintiff Kimberly S successfully completed her program at the Pine Rest facility and, per the order of the court at a hearing on said date, she has been

reunited with her mother, under the supervision of the court;

k) On or about January 18, 2007, Defendant Court recorded the issuance of an Order of Removal in its “Juvenile Case Inquiry,” reassigning MCLC as Kimberly S’ new counsel [Exh. 9]; however, the actual Order of Removal was not issued until on or about April 9, 2007; [Exh. 9] and

l) As of the filing of this Complaint, no one on behalf of MCLC has identified themselves as the individual LGAL on behalf of Minor Plaintiff Kimberly S, nor has anyone contacted either the minor Plaintiff or the former LGAL/current Next Friend Plaintiff Shillingford, to introduce him- or herself, or to learn the history of Plaintiff Kimberly S’s situation or the details of her case.

42. **Plaintiff Jeremy Brand** is an attorney licensed to practice law in the State of Michigan since 1981. Plaintiff Attorney Brand is a member of Plaintiff TLAWCJC and has, since 1987, specialized in the representation of juveniles in child protective and delinquency matters, including in Wayne County, Michigan. From 1982 until 1987, Plaintiff Brand worked in the Wayne County Prosecutor’s Office on behalf of juvenile victims of abuse and neglect. He has, over the course of his professional career, represented more than a thousand minor children as their LGAL in child protective cases.

43. Plaintiff Brand is and has been at all relevant times qualified for assignment as counsel for indigent children in the Third Circuit Court Family Division-Juvenile Section, pursuant to LAO 2006-08, Section III.B. [Exh. 1].

44. As of October, 2006, Plaintiff Brand, had a caseload of approximately 50 child protective cases and 50 delinquency cases, as appointed counsel in the Juvenile Section, when Defendant Kelly started issuing Orders of Removal on said cases, including Minor Plaintiffs Naomi S, Kyishia R and Terri N, without a hearing and without good cause shown on the record,

and to turn over his files on said cases to unnamed counsel in said cases who were purportedly to replace him, thereby interfering with his lawfully protected attorney-client relationships and his property interest in his files with respect to those relationships.

45. On or about April 5, 2007, Attorney Plaintiff Brand received 43 e-mails from Defendant Court, each with an “Order of Removal of Assigned Counsel and Appointment of New Counsel” attached, all effective as of April 9, 2007, removing him as counsel, without notice or good cause, for all the remaining children he had represented either as LGAL or as appointed counsel in child protective and delinquency cases before referees.

46. **Plaintiff Naomi S** is a minor child, currently 15 years old, under the jurisdiction of the Family Division Juvenile Section of the Third Circuit Court in a child protective proceeding, Case No. 04-433907, and has for the past three (3) years been represented by Plaintiff Jeremy Brand as her LGAL, (now her Next Friend), until January 22, 2007, when Defendant Chief Judge Kelly issued Order of Removal of Assigned Counsel [**Exh. 10**], replacing her individual LGAL with an unnamed counsel, identified only as “Michigan Children’s Law Center.”

47. The following facts pertain to Minor Plaintiff Naomi S, acting through her Next Friend Brand:

- a) Plaintiff Attorney Brand has been representing her, as her LGAL, since September 2004;
- b) Over the time that Plaintiff Brand has been her LGAL, between September 2004 and January 2007, he visited with her at least ten (10) times and spoke with her over the telephone at least twice a month;
- c) Plaintiff Naomi S has a history as a victim of neglect and for alleged delinquent behavior, with serious emotional issues;
- d) Plaintiff Naomi S has established a beneficial relationship with her LGAL,

Plaintiff Attorney Brand, now her Next Friend, which she wished to maintain and does not wish to have disrupted, as she has clearly stated and expressed [Exh. 10];

e) As of the filing of this Complaint, no one on behalf of MCLC has identified him- or herself as the individual LGAL on behalf of Minor Plaintiff Naomi S, nor has anyone contacted either the minor Plaintiff or her former LGAL/current Next Friend Plaintiff Brand, to introduce him- or herself, or to learn the history of Plaintiff Naomi S's situation or the details of her case.

48. **Plaintiff Kyishia R** is a minor child, currently 15 years old, under the jurisdiction of the Family Division Juvenile Section of the Third Circuit Court in a child protective proceeding, Case No. 06-460,193, and has been represented by Plaintiff Attorney Brand as her LGAL, (now her Next Friend), since October 2006.

49. Plaintiff Brand has been informed that he will be removed as LGAL for Minor Plaintiff Kyishia R at the disposition phase of the proceeding, on or about June 6, 2007, pursuant to LAO 2006-08, although he has not yet received an Order of Removal.

50. The following facts pertain to Minor Plaintiff Kyishia R:

a) Plaintiff Attorney Brand has represented her, as her LGAL since October 2006, and as her appointed counsel in a delinquency proceeding, since November 14, 2006;

b) Over the time that Plaintiff Brand has been her LGAL/appointed counsel, he has met with Plaintiff Kyishia R at least ten (10) times, spoken on the telephone with her at least 15 times (at least twice a month), corresponded in writing with her at least three (3) times and appeared at least nine (9) court hearings;

c) Plaintiff Kyishia R has a history as a victim of neglect and for alleged involvement in delinquent behavior; she also has a history of serious emotional issues;

d) Plaintiff Kyishia R has begun to establish a trusting relationship with Plaintiff Attorney Brand, now her Next Friend, which she desires to maintain and does not wish to have disrupted as she has clearly stated and expressed. **[Exh. 11, Statement Regarding Representation]**.

51. **Plaintiff Terri N** is a minor child, currently 13 years old, under the jurisdiction of the Family Division Juvenile Section of the Third Circuit Court as a permanent ward of the court, in a child protective proceeding, Case No. 01-395330, and has for the past six (6) years been represented by Plaintiff Jeremy Brand as her LGAL, (now her Next Friend), until January 24, 2007, when Defendant Chief Judge Kelly issued Order of Removal of Assigned Counsel **[Exh. 12]**, replacing her individual LGAL with an unnamed counsel, identified only as “Michigan Children’s Law Center,” MCLC.

52. The following facts pertain to Plaintiff Terri N:

- a) Plaintiff Attorney Brand has been representing her, as her LGAL, since January 11, 2001;
- b) Plaintiff Terri N is a permanent ward of the court waiting for adoption while residing in a foster home;
- c) Terri’s adult sister lives in Ohio and wants to adopt her, but the State of Michigan has rejected this option;
- d) Plaintiff Attorney Brand has met with Plaintiff Terri N many times and he has worked diligently, through his representation, to fulfill both Plaintiff Terri N’s and her sibling’s desires to be together as a family;
- e) On January 24, 2007, Plaintiff Attorney Brand filed a Petition for Review in an effort to convince the judge to override the State’s decision that rejected adoption by the Ohio sister;

f) On the same date, January 24, 2007, Plaintiff Brand was removed as LGAL for Plaintiff Terri N [**Exh. 12, Order of Removal**];

g) Plaintiff Terri N has a longstanding and trusting relationship with Plaintiff Attorney Brand, now her Next Friend, which she wants to maintain and does not wish to have disrupted as she has clearly stated and expressed. [**Exh. 12, Statement Regarding Representation**].

53. Despite having been removed as LGAL/counsel on the aforementioned cases, Attorney Brand continues to be contacted by all of the Plaintiff minor children and they continue to rely on him as their advocate and counsel, with no compensation for Brand, because of the children's trust they have built with him and because there has been no individual or effective counsel to replace him.

54. **Plaintiff Sydney L. Ruby** is an attorney licensed to practice law in the State of Michigan since 1961. Plaintiff Attorney Ruby is a member of Plaintiff TLAWCJC and has, for the past five years, specialized in the representation of parents and juveniles in child protective matters and juvenile delinquency matters, including in Wayne County, Michigan. He has, in the last five years, represented approximately 50 minor children, both as LGAL in child protective cases, including Minor Plaintiffs Clarence S, William and Wesley D, and as appointed counsel in delinquency cases.

55. Plaintiff Ruby is and has been at all relevant times qualified for assignment as counsel for indigent children in the Third Circuit Court Family Division-Juvenile Section, pursuant to the LAO 2006-08, Section III.B. [**Exh. 1**].

56. As of December 20, 2006, Plaintiff Attorney Ruby, had a caseload of approximately 13 child protective cases representing children and 25 delinquency cases, as appointed counsel/LGAL in the Juvenile Section, when Defendant first ordered, and, then thereafter,

continued to order him removed from most of the aforementioned cases, including Minor Plaintiffs Clarence S and siblings William D and Wesley D. These orders were issued without a hearing and without good cause shown on the record. He was also ordered to turn over his files on said cases to unidentified and unnamed counsel in said cases who were, purportedly, to replace him. These orders thereby interfered with his lawfully protected attorney-client relationships and his property interest in his files with respect to those relationships.

57. On or about April 5, 2007, Attorney Plaintiff Ruby received nineteen (19) e-mails from Defendant Court, with electronic “Orders of Removal of Assigned Counsel and Appointment of New Counsel” attached, all effective as of April 9, 2007, removing him as LGAL/counsel for the most if not all of the remaining children he represented whose cases are in front of referees.

58. **Plaintiff Clarence S** is a minor child, currently 16 years old, under the jurisdiction of the Family Division Juvenile Section of the Third Circuit Court as a permanent ward of the court, in a child protective proceeding, Case No. 01-396,079, and has for the past three (3) years been represented by Plaintiff Attorney Ruby as his LGAL, (now his Next Friend), until December 20, 2006, when Defendant Chief Judge Kelly issued Order of Removal of Assigned Counsel [**Exh. 13**], replacing his individual LGAL with an unidentified and unnamed counsel, identified only as “Michigan Children’s Law Center,” MCLC.

59. The following facts pertain to Plaintiff Clarence S:

- a) Plaintiff Attorney Ruby has represented him, as his LGAL, since March 2004;
- b) Over the time that Plaintiff Ruby was his LGAL, between March 2004 and December 2006, he visited with Plaintiff Clarence S at least six times, (five times at his foster home and once, most recently, at his current placement, St. Jude’s), and has appeared at every hearing on his behalf, at least ten (10) times, except for two

- hearings in mid-2004 at the beginning of his representation of Plaintiff Clarence S;
- c) During the time that Plaintiff Attorney Ruby was LGAL, he also had occasional telephone communication with the Plaintiff Clarence S;
 - d) Plaintiff Clarence S has established a bond of trust with Plaintiff Ruby which he wants to maintain and does not wish to have disrupted, as he has clearly stated and expressed on the record, at the hearing on December 20, 2006, at which Plaintiff Attorney Ruby was removed as his LGAL;
 - e) As of the filing of this Complaint, no one on behalf of MCLC has identified him- or herself as the individual LGAL on behalf of Minor Plaintiff Clarence S, nor has anyone contacted either the minor Plaintiff or the former LGAL/current Next Friend Plaintiff Ruby, to introduce him- or herself, or to learn any of the history of Plaintiff Clarence S's situation or any of the details of his case.

60. Plaintiffs William D and Wesley D, siblings, are minor children, currently 15 and 13 years old respectively, under the jurisdiction of the Family Division Juvenile Section of the Third Circuit Court, in a child protective proceeding, Case Nos. 02-126694 and 06-008184 (Termination Petition), and have for the past two (2) years been represented by Plaintiff Attorney Ruby as their LGAL, (now their Next Friend), until January 5, 2007, when Defendant Chief Judge Kelly issued Order of Removal of Assigned Counsel [**Exh. 14**], replacing their individual LGAL with an unidentified and unnamed counsel, identified only as "Michigan Children's Law Center," MCLC.

61. The following facts pertain to both Plaintiffs William and Wesley D:

- a) Plaintiff Attorney Ruby has represented them, as their LGAL, since April 2005, and has established a trusting relationship and a bond with each child;
- b) Over the time that Plaintiff Ruby was their LGAL, between April 2005 and

January 2007, he appeared at each of the ten (10) hearings on their behalf, until he was removed at the most recent hearing, on January 5, 2007;

c) In June 2006, Plaintiff Ruby met with both of the boys, their caregivers, therapists, relatives and workers, in preparation for the permanent custody trial that occurred on June 23, 2006, where Plaintiff Ruby represented the boys and at which time their mother's parental rights were terminated;

d) Since the termination of their mother's parental rights, Plaintiff Ruby has visited with Plaintiff William D once at his foster home, has talked to him on the telephone several times, and has seen him in court at every post-termination hearing;

e) Plaintiff Wesley D has had a particularly difficult time adjusting and Plaintiff Ruby has visited with him at Methodist Children's Home Society and met with him and his therapist at least 4-5 times;

f) Both Plaintiffs William and Wesley D have established bonds of trust with Plaintiff Attorney Ruby that they want to maintain and do not wish to have disrupted, as the disruption of which will be detrimental to them;

g) As of the filing of this Complaint, no one on behalf of MCLC has identified him- or herself as the individual LGAL on behalf of Minor Plaintiffs William and Wesley D, nor has anyone contacted either of the minor Plaintiffs or the former LGAL/current Next Friend Plaintiff Ruby, to introduce him- or herself, or to learn the history of Plaintiffs William and Wesley D's situations or the details of their cases.

62. Plaintiff F. Patrick Devine is an attorney licensed to practice law in the State of Michigan since 1978. Mr. Devine is a member of TLAWCJC and has, for the past 29 years, specialized in the representation of both parents and juveniles in child protective matters and juveniles in delinquency matters, including in Wayne County, Michigan. He has, over the course

of his professional career, until November 15, 2006, represented more than one thousand minor children as LGAL in child protective cases, including Minor Plaintiff Justin S, and as appointed counsel in delinquency cases, in Wayne County Court.

63. Plaintiff Devine is and has been at all relevant times qualified for assignment as counsel for indigent children in the Third Circuit Court Family Division-Juvenile Section, pursuant to LAO 2006-08, Section III.B. **[Exh. 1]**.

64. As of November 15, 2006, Plaintiff Attorney Devine had a caseload of approximately 25 child protective cases representing at least 30 children and several delinquency cases, as appointed counsel and/or LGAL in the Juvenile Section, when Defendants first issued, and thereafter continued to issue, Orders of Removal on his cases, including his client's Plaintiff Justin S, and ordered him to turn over his files on said cases to the unidentified and unnamed counsel in said cases who were purportedly to replace him. These orders thereby interfered with his lawfully protected attorney-client relationships and his property interest in his files with respect to those relationships.

65. On or about April 5, 2007, Attorney Plaintiff Devine received 28 e-mails from Defendant Court, each with an "Order of Removal of Assigned Counsel and Appointment of New Counsel" attached, all effective as of April 9, 2007, removing him as counsel, without notice or good cause, for all the remaining children he had represented either as LGAL or as appointed counsel in child protective and delinquency cases before referees.

66. **Plaintiff Justin S** is a minor child, currently 16 years old, under the jurisdiction of the Family Division Juvenile Section of the Third Circuit Court in a child protective proceeding, Case No. 00-394753, and since 2001 has, along with his three younger siblings, been represented by Plaintiff Attorney Devine as his LGAL, (now his Next Friend) until November 15, 2006, when Defendant Chief Judge Kelly issued an Order of Removal of Assigned Counsel **[Exh. 15]**,

that replaced his individual LGAL with an unidentified and unnamed counsel, identified only as “Michigan Children’s Law Center,” MCLC.

67. The following facts pertain to Minor Plaintiff Justin S:

- a) Plaintiff Justin S is a child with severe emotional problems. He has had a history of being transferred from one institutional placement to another while in foster care under the jurisdiction of the court. Throughout these placements and transfers he has always wanted to go home to his mother;
- b) He has recently been placed back in the custody of his mother, since September 2006, but is still under the court’s jurisdiction;
- c) Plaintiff Attorney Devine has represented Plaintiff Justin S continuously as his LGAL since 2001 and has established a relationship and a bond with him;
- d) For the past six (6) years, Plaintiff Devine has had regular and consistent contact with Minor Plaintiff Justin S, at least four (4) times a year, sometimes as often as two-to-three times a month as circumstances required; Plaintiff Attorney Devine always visited Justin prior to review hearings and always saw him at court;
- e) During the time that Plaintiff Devine was Justin’s LGAL, between 2001 and November 15, 2006, he appeared at each of the hearings on his behalf, until he was removed at the most recent hearing, on November 15, 2006;
- f) As of the filing of this Complaint, no one on behalf of MCLC has identified themselves as the individual LGAL on behalf of Minor Plaintiff Justin S, nor have they contacted either the minor Plaintiff or the former LGAL/current Next Friend Plaintiff Devine, to introduce him- or herself, or to learn the history of Plaintiff Justin S’s situation or that of his siblings or the details of their cases.

68. **Defendant Judge Mary Beth Kelly** is the Chief Judge for the Defendant Third

Circuit Court, Wayne County, Michigan, who at all times relevant was acting in her official administrative capacity.

69. **Defendant Third Judicial Circuit Court** is the County Court within which sits the Family Division Juvenile Section, which presides over all matters pertaining to child protective and delinquency proceedings in the County of Wayne, State of Michigan.

70. The acts complained of took place in the City of Detroit, County of Wayne, State of Michigan.

STATEMENT OF FACTS

71. Plaintiffs reallege and incorporate Paragraphs 1 through 70 of this Complaint, as if fully set forth herein.

72. On or about September 22, 2006, Defendant Chief Judge Mary Beth Kelly, acting in her official administrative capacity as Chief Judge of Defendant Third Judicial Circuit Court, adopted Local Administrative Order 2006-08, (hereinafter “LAO 2006-08”), “Plan for Assignment of Counsel in the Third Judicial Circuit,” which rescinded and replaced Local Administrative Order 2006-01.

73. LAO 2006-08 establishes, inter alia, the following, among other, new procedures regarding the assignment of counsel for juveniles in child protective and delinquency proceedings:

- a) The award of lump sum contracts to “...providers of legal services such as Legal Aid and Defenders Association (LADA) and Michigan Children’s Law Center (MCLC), and other groups of practicing attorneys, to provide exclusive representation for juveniles in both delinquency and child protective proceedings...,” **[Exh. 1, Section III.A]**, thereby eliminating from the pool of assigned counsel to represent indigent children literally hundreds of individual, eligible, skilled and qualified

attorneys;

b) The unfettered discretion of the Chief Judge to “...reassign counsel during the post-dispositional stage of a case...” [Exh. 1, LAO 2006-08, Section III.D.2];

c) The imposition of the burden, on the individually appointed lawyer-guardians ad litem (LGALS), to file a motion with the Chief Judge and of demonstrating undefined “special circumstances” in order to remain assigned counsel for their juvenile clients, [Exh. 1, Section III.D.3], in violation of the statutory requirement that the *court* find “good cause shown on the record,” before an individual assigned counsel can be removed. MCLA §712A.17c(9).

74. The removal of LGALs from cases to which they have been properly assigned and in which they have developed ongoing attorney-client relationships, some for years, without a finding of good cause and having nothing to do with the quality or circumstances of the representation provided by any given attorney to any given client, [Exh. 1, Section III.D.2], violates the statute that prohibits the court from removing or discharging a LGAL for a child “...as long as the child is subject to the jurisdiction, control, or supervision of the court...**unless the court discharges the lawyer-guardian ad litem for good cause shown on the record.**” MCLA §712A.17c(9). (Emphasis added).

75. On or about an unknown date prior to May 10, 2006, at least four months prior to the adoption of LAO 2006-08, Defendant Kelly, acting on behalf of Defendant Third Judicial Court, released a “Request for Proposal for Legal Services for Juveniles,” (hereinafter “RFP”), through the Wayne County Executive Court Administrator’s Office, soliciting proposals for 2-year lump sum contracts for the “...legal representation, including serving as [LGAL], for juveniles who are the subject of juvenile delinquency (delinquency) or child protective (neglect) proceedings in the Juvenile Section of the Court’s Family Division (the Juvenile Section).” [Exh. 2, §I.B]

76. One of the three (3) bases for an award of such contracts was identified to be an evaluation of whether "...[t]he provision of the services required under this RFP at the lowest overall cost." [Exh. 2, §III.D.2.c].

77. Defendant Kelly further stated, through said RFP, that the award of a contract for representation of children in the Juvenile Section would ultimately be "...in the sole and exclusive discretion of the Court," based on what "...the Court deems to be in *its* best interests," [Exh. 2, §III. D. 3] (emphasis added) in contrast to the welfare and best interest of the children to be represented, the standard imposed by MCLA §§712A.1(3), 712A.4(4), 712A.13b, 712A.17(1)(b), 712A.17c(2)(e) and (10), 712A.17d, 712A.18f(3), 712A.19a, and 712A.19b.

78. At no time prior to the promulgation of LAO 2006-08, was input sought from Plaintiff lawyers, or all others similarly situated, or Plaintiff TLAWCJC, regarding the specific provisions of Section III of said Administrative Order, all of whom, individually or organizationally, either provide services to families within Defendant Court's jurisdiction, and/or are directly affected by the operation of the family division as lawyers who regularly represent juveniles in both child protective, as LGALs, and delinquency proceedings. This failure to obtain input regarding the specific provisions that are the subject of this litigation was a violation of the requirements of Supreme Court Administrative Order 2003-2.

National and Michigan-Based Legal Organization Have Long Recognized the Prerequisites for Constitutionally Effective Assistance for Children

79. Plaintiffs reallege and incorporate Paragraphs 1 through 78 of this Complaint, as if fully set forth herein.

80. There are national professional standards, as well as Michigan-based studies, on the prerequisite for effective legal representation of children in delinquency and/or child protective proceedings. The standards applicable to the instant case are as follows:

- a) Representation should be continuous;
- b) Effective representation requires reasonable caseloads and adequate compensation, including a limit of 100 child protective clients at a time for full-time lawyers;
- c) Courts should restrict substitution by members of the same firm or organization; and
- d) Contract systems for juvenile representation should contain safeguards for affective representation.

81. The ABA Center on Children and the Law and the National Center for State Courts presented a comprehensive list of recommendations to the Michigan Supreme Court State Court Administrative Office, regarding the handling of child protective cases by Michigan courts, which includes:

Recommendation 17: All courts presiding over child abuse and neglect cases should implement procedures that guarantee that each child and parent are appointed trained and skilled attorneys in advance of initial preliminary hearings and **who will continue representation to each child and parent until a plan of permanency is implemented ...**

[Exh. 23, Court Improvement Program Summary of Recommendations: Assessment of Probate Courts' Handling of Child Abuse and Neglect Cases]. (Emphasis added).

82. The National Association of Counsel for Children (NACC) has issued *Recommendations for Representation of Children in Abuse and Neglect Cases* (2001) which include certain “systemic safeguards.” The very first recommendation made, indicative of its paramount importance, along with explanatory Comment, is as follows:

- 1. Children need competent, independent, and zealous attorneys. The **system of representation** must require the appointment of competent, independent, zealous attorneys for every child at every stage of the proceedings. **The same attorney should represent the child for as long as the child is subject to the court’s jurisdiction.**

* * *

Comment C: Continuity of representation is important to the child. **The same lawyer should represent the child for as long as the child is under the jurisdiction of the court.** Temporary substitution of counsel, although often unavoidable, should be discouraged. Any substitute counsel must be familiar with the child and the child's case.

National Association of Counsel for Children, *NACC Recommendations for Representation of Children in Abuse and Neglect Cases* (2001). [Exh. 24, NACC Recommendations, p. 6] (Emphasis added).

83. The NACC *Recommendations* also include the following:

Children need attorneys with adequate time and resources. The system of representation must include **reasonable caseload limits** and at the same time provide **adequate compensation** for attorneys representing children.

Comment A: The NACC recommends that **full time attorney** represent **no more than 100 individual clients at a time**, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group. **This is the same cap recommended by the U.S. Dept. of HHS Children's Bureau and the American Bar Association.**[FN2 omitted] One hundred cases averages to 20 hours per case in a 2000-hour year.

Comment B: For the sake of the child client and the interests of the system, **attorneys must be provided appropriate and reasonable compensation.** The NACC adopts the following position of the Dept. of HHS on this point: **"Primary causes of inadequate legal representation of the parties in child welfare cases are low compensation and excessive caseloads.** Reasonable compensation of attorneys for this important work is essential. **Rather than a flat per case fee, compensate lawyers for time spent. ... The need for improved compensation is not for the purpose of benefiting the attorney, but rather to ensure that the child receives the intense and expert legal services required.**

[Exh. 24, NACC Recommendations, p. 7]. (Emphasis added).

84. A study conducted by the Muskie School of Public Service at the Cutler Institute for Child and Family Policy and the American Bar Association Center on Children and the Law (Muskie-ABA), looked specifically at Michigan in evaluating courts' abilities to meet the needs of children under their jurisdiction. That group recommended that the Michigan Supreme Court Administrator's Office (SCAO):

28. Establish Court rules specifying that subject to advance court approval for

exception, **the same attorney will represent the client** (including DHS) **at all stages of the court process and that members of the same firm or organization cannot substitute for the individual attorney.** Establish strict criteria for exemptions.

Muskie School of Public Service and American Bar Association, *Michigan Court Improvement Program Reassessment* (2005). [Exh. 25, p. 146] (Emphasis added).

85. The Muskie-ABA group made other recommendations for Michigan, including:

“...minimum standards for attorney compensation...[G]uidelines regarding maximum attorney caseloads...” Muskie School of Public Service and American Bar Association, *Michigan Court Improvement Program Reassessment* (2005). [Exh. 25, p. 191]

86. The Muskie-ABA group also made the following comment:

“There are currently no state standards guiding the compensation of attorneys representing parents and children in Michigan. It would seem to make sense that the SCAO promulgate such standards. For example, it seems grossly unfair for a child or parent in one court to be potentially disadvantaged in representation because of a compensation system that discourages case preparation outside of court appearance time. Every child and parent deserves the highest possible quality of representation in these proceedings. **Though reasonable compensation alone cannot ensure that quality and needs to be combined with other factors (e.g., appropriate training and reasonable caseloads), it is nonetheless vitally important and should be made a priority.**” [Exh. 25, Muskie/ABA Center on Children and the Law, p. 146] (Emphasis added).

87. A special report released by the Bureau of Justice Assistance and cited by the ABA Center on Children and the Law, identified several relevant problems and deficiencies with contract systems for providing indigent, including juvenile, representation. For example, the problems associated with using contract systems are that they:

- **Place cost containment before quality.**

- Result in lawyers with fewer qualifications and less training doing a greater percentage of the work.
- Offer limited training, supervision, or continuing education to new attorneys or managers.
- **Reward low bids rather than realistic bids.**
- **Provide unrealistic caseload limits or no limits at all.**
- Do not provide support staff or investigative or expert services.
- Do not provide for independent monitoring or evaluation of performance outside of costs per case.
- Do not include a case-tracking or case management system and do not incorporate a strategy for case weighing.

Gary A. Lukowski and Heather J. Davies, ABA Center on Children and the Law, *A Challenge for Change: Implementation of the Michigan Lawyer- Guardian Ad Litem Statute* (2002), p. 24-25, [Exh. 30] quoting from Robert L. Spangenberg et al., U.S. Department of Justice, *Contracting for Indigent Defense Service: A Special Report 13* (2000). (Emphasis added).

Unlawful Removal of Counsel from Assigned Cases, Interference with Attorney-Client Relationship and Violation of Right to Effective Assistance of Counsel

88. Plaintiffs reallege and incorporate Paragraphs 1 through 87 of this Complaint, as if fully set forth herein.

89. Starting on or about October 19, 2006, Third Judicial Circuit Court Director of Assigned Counsel, Leonard Branka, started circulating an unknown number of emails to every attorney who at that time was representing indigent children as LGAL's or as appointed counsel in delinquency cases, whose cases were still assigned to referees, including Plaintiff attorneys, advising them, in violation of law, that they were going to be removed from their cases after their next hearing dates for those cases and that the "...Court has established attorney groups who will provide representation for juveniles on both neglect and delinquency cases appearing before the Court...This case will remain assigned to you until the dispositional hearing is completed. After this hearing, please relinquish all relevant materials pertaining to the case in the referee's courtroom..." [Exh. 3, Branka emails re: Removals and Relinquishment of Files].

90. On or about October 24, 2006, Plaintiff attorney F. Patrick Devine sent a letter to Mr.

Branka, objecting to being removed as attorney for his clients and to the improper severance of existing and longstanding attorney-client relationships in violation of the children's right to legal representation, as well as to the inappropriate request to relinquish his documents regarding those cases. **[Exh. 17]**.

91. On or about October 27, 2006, Defendant Court posted a Notice in the Lawyers Lounge of the Juvenile Court announcing that, effective immediately, attorneys assigned to represent children in delinquency proceedings were prohibited from making Judge Demands at upcoming Preliminary Hearings in their respective cases, **[Exh. 19]**, thereby interfering with their ability to effectively represent the best interest of their clients.

92. The reason for the October 27 Notice was to prevent cases from being assigned to a judge, because once assigned to a judge, cases were not being removed from the Plaintiff attorneys, and all those similarly situated. **[Exh. 20]**.

93. On or about November 6, 2006, Defendant Chief Judge Kelly responded to Plaintiff Devine's October 19 letter, relying on the purported findings of a Juvenile Task Force as the justification for the adoption of LAO 2006-08, including the removal of counsel from the cases in which they have been representing their clients, without a showing of good cause, as part of the implementation of a new docket system to allegedly meet the time standards for adjudicating juvenile cases. **[Exh. 18, 11/6/06 Kelly Correspondence to Devine]**.

94. In fact, the 2005 Juvenile Task Force Report, referred to in Defendant Kelly's November 6, 2006 letter, did not recommend either removing counsel from their ongoing representation of their clients, or replacing the Assignment of Counsel system from individually assigning eligible and qualified counsel to awarding lump sum contracts to legal "groups." Rather, the Task Force made the following major recommendations, as summarized in Defendants' 2005 Annual Report:

- a) Assigning a judge at the time the case is filed;
- b) Creating blended dockets for referees that included both neglect and delinquency cases;
- c) Requiring a scheduling order at the initiation of a case to keep within the applicable time standards;
- d) Enhancing the process of service procedures;
- e) Creating a Docket Review Committee in order to set goals and monitor compliance with case processing time standards.

[Exh. 21, p. 8; See also Exh. 26, pp. 6-8 for comprehensive list of all of the Task Force’s Recommendations].

95. Defendant Chief Judge Kelly, in her November 6 letter, also incorrectly stated that LAO 2006-08 “*requires* the substitution of Children’s counsel in the post dispositional [sic] hearing phase.” [Exh. 18, (emphasis added)], when in fact, LAO 2006-08 provides that the “Chief Judge *may* reassign counsel during the post-dispositional stage of a case.” [Exh. 1] (Emphasis added).

96. Since November 13, 2006, Plaintiff attorneys, and all those similarly situated, have received hundreds of computer-generated “Orders of Removal of Assigned Counsel” forms with a computer-generated stamp purporting to be the signature of “Mary Beth Kelly, Chief Judge.” [Exh. 16a]. These Orders of Removal have continued to be issued up to and including April 5, 2007, when the Court circulated several hundred additional “Orders of Removal of Assigned Counsel and Appointment of New Counsel,” via email, with cc’s to the “Attorney Group.” [Exh. 16b].

97. Said Orders have removed the properly appointed counsel as the lawyers and/or LGALs for their clients, without the consent or even the knowledge of their clients, and replaced

them with “groups” rather than individual attorneys, (i.e. LADA or MCLC, a nonprofit organization incorporated solely to provide educational services), as the new counsel, thereby interfering with unknown numbers of attorney-client relationships without good cause and in violation of law. **[Exh. 16]**.

98. Said Orders also require Plaintiff counsel, and all those similarly situated, to provide certain documents to “newly appointed counsel,” none of whom Defendant Court identified by name but only by the “groups” that have been awarded lump sum contracts by Defendant Court. The required documents are as follows:

- a) for child protective proceedings,
 - 1) the petition and any supplemental petitions;
 - 2) any findings of fact or law;
 - 3) any orders;
 - 4) the most recent court report; and
 - 5) the most recent placement information about the juvenile, including the name, address and telephone number of the current care giver; and
- b) for delinquency proceedings,
 - 1) the petition and any supplemental petitions;
 - 2) orders of disposition;
 - 3) most recent court reports; and
 - 4) most recent court order.

[Exh. 16].

99. The documents and/or materials that Plaintiff Attorneys, and all others similarly situated, have been requested and/or ordered to turn over to unnamed counsel or to simply relinquish in a referee’s courtroom, are the property of the attorneys, and/or they are protected by

work-product and/or attorney-client privilege.

100. The removal Orders, issued pursuant to LAO 2006-08, interfere with ongoing attorney-client relationships in violation of law, MCLA 712A.17(c)(9), without a good cause hearing, let alone a showing of good cause. They do this also, without the client's consent, without a hearing to determine the best interest of the client, and without the valid appointment of substitute counsel, but rather the designation of "groups" which have been awarded lump sum contracts by Defendant Court and no individual attorneys assigned to represent individual children.

101. During the first week in December, 2006, Plaintiff Attorney Radulovich filed a *Motion to Strike Orders of Removal of Counsel*, seeking to halt the wholesale removal by Defendant Kelly of Plaintiff Radulovich as the attorney and/or LGAL on behalf of the 35 children she has been representing, challenging the Defendant Court's general authority to remove counsel, in violation of MCLA §712A.17c(9), and generally challenging the implementation of Defendants' private contract system, under LAO 2006-08 §III.A, of assigning non-profit corporations and "legal groups" to exclusively represent juveniles in neglect and delinquency proceedings.

102. On or about January 30, 2007, Defendant Kelly issued an *Opinion and Order* denying Plaintiff Radulovich's *Motion* in its entirety. In so doing the Defendant failed to demonstrate any authentic or even arguable good cause, as required by MCL 712A.17c(9), for the removal of Radulovich other than the mere existence of LOA 2006-08. **[Exh. 28]**.

103. In her written opinion denying Radulovich's motion, as well as in other numerous ways, Defendant has made clear that it is futile to challenge the removal of any attorney and/or LGAL based upon "special circumstances," for the following reasons, among others:

- a) The principal reason for the Defendant's denial of the aforementioned motion was

the existence of LOA 2006-08, which constitutes a *per force* rejection of individualized and articulated “special circumstances”; and

b) The Defendant’s refusal in its written Opinion and Order to consider whether the removal of Radulovich as attorney and LGAL would impose hardship on the minor Children Plaintiffs herein, constitutes a clear statement that those circumstances are irrelevant to a consideration of “special circumstances.”

104. Plaintiff Attorneys Trent, Shillingford, Brand, Ruby and Devine have not brought such motions before Defendant Kelly, pursuant to LAO 2006-08, §III.D.3, to present the “special circumstances” regarding their representation of their respective clients, because:

a) Section III.D.3 unlawfully imposes on them the burden of having to show “special circumstances” without the ability to challenge the court’s authority to impose such a burden;

b) Such a motion would be futile and inadequate, insofar as Plaintiff Attorneys are effectively precluded from challenging the Defendant Court’s authority to remove them as LGALs to begin with, under MCLA 712A.17c(9), since Defendant Chief Judge relies upon her own administrative order to support her authority to remove them;

c) The futility of filing such motions is supported by the issuance of Defendant Kelly’s January 30, 2007 *Opinion*;

d) The purported remedy created by Section III.D.3 is not a remedy at all, because it requires Plaintiff Attorneys to convince Defendant Chief Judge to exercise discretion that she does not properly have, as a matter of law;

e) Even if they were to file such a motion as to an individual minor client and were granted relief based on “special circumstances” pursuant Section III.D.3 as to some or

all of their individual clients, all they would have to look forward to is having to file other motions on behalf of their other minor clients because the underlying practice would remain unchanged, thereby creating a situation in which the legal remedy is inadequate; and

f) Plaintiff Attorneys do not have clear standing to appeal. This was demonstrated where Plaintiff Radulovich brought a Motion to Strike Orders of Removal with respect to several cases from which she has been removed. Defendant Kelly, in a written opinion, denied the motion and explicitly refused to recognize the former LGAL's standing to argue on behalf of the client from which she was being illegally removed. [Exh. 28, p. 10].

Unlawful Replacement of Individual Assignment System With Lump Sum Private Contracts with Lawyer Groups and Nonprofit Organizations

105. Plaintiffs reallege and incorporate Paragraphs 1 through 104 of this Complaint, as if fully set forth herein.

106. Defendant Court's replacement of the previous system, which assigned individual eligible and qualified counsel to represent juveniles in neglect and delinquency proceedings, with LAO 2006-08, § III.A, the awarding of lump sum private contracts with non-profit corporations and private attorney groups creates a payment scheme that results in different attorneys being paid at different rates for their services, with no parity in the different independent contractor's pay or consideration of the independent contractor's caseload to pay ratios.

107. The contract system adopted by LAO 2006-08 provides for the award of up to multi-million dollar contracts to private "attorney groups" whose "group leaders" (many of whom, based on information and belief, have minimal experience in Wayne County Circuit Juvenile Court), and receive large fees ("administrative costs") to refer cases to independent

contractors who are paid unreasonable and inadequate flat fixed fees regardless of the number of cases to which they are assigned.

108. The Legal Aid and Defender Association (LADA) employs fifteen (15) full-time lawyers (or full-time equivalents), and the four (4) remaining “groups” sub-contract with a total of twenty (20) full-time (or full-time equivalent) attorneys, with approximately five (5) full-time, (or full-time equivalent) sub-contractor attorneys assigned to each “pod,” (i.e. three courtrooms, consisting of one judge and two referees). This means that there are a total of thirty-five (35) full-time, or full-time equivalent, attorneys available to represent at least 8,000 children in child protective proceedings (228 children per attorney) and 11,600 delinquency cases (331 cases per attorney).

109. The contract system adopted by LAO 2006-08 does not take into account the time that each individual attorney is expected to spend in representing his or her share of juvenile clients or the complexity of each case.

110. The contract system adopted by LAO 2006-08 rewards low bids rather than realistic bids, places cost containment before quality of representation and results in fewer lawyers doing a greater percentage of the work.

111. The previous individual assignment system, with a statutorily set Fee Schedule, was deemed by this Court to be reasonable and was subject to Supreme Court oversight.

112. With the new “group” contract plan, there is no oversight regarding the amounts being paid to the independent sub-contractor attorneys, as to whether the pay is reasonable, disparate or wholly inadequate, such that the children’s constitutional and statutory right to effective assistance of counsel is severely compromised.

113. The contract system results in a dramatic reduction in the number of attorneys available to represent children. According to the Third Circuit Court’s 2005 Annual Report,

there were between 8,000 - 9,000 children in the abuse/neglect system and a total of 11,630 delinquency cases [Exh. 21] in the Juvenile Section for that year alone.

114. The failure to adequately compensate assigned counsel amounts to a violation of the constitutional right to counsel, insofar as inadequate compensation causes an insufficient number of attorneys handling an excessive caseload, and provides financial disincentives to the provision of constitutionally adequate representation.

115. Although the RFP requires proposed contractor/vendors to certify that they have no interest or relationships which would give rise to a conflict of interest with the Court or any judge or court administrator, [Exh. 2, §III.A.2.h], it is silent regarding requiring proposed contractor/vendors to include in their proposals any plan for checking for conflicts of interest between any parties that they, through their independent contractors, represent.

116. Some of the contracting groups, or the independent sub-contractors working for those groups, have represented both child and parents in numerous child protective cases over the years. There is no mechanism in place among these groups to screen for conflicts of interest where children are assigned be represented by a “group,” of which one or more of the individual sub-contractors may have represented children or parents in previous proceedings. As a result, attorneys routinely represent clients in situations in which conflicts of interest exist.

117. Approximately eighty percent (80%) of the children under the jurisdiction of the Defendant Court are African-American. [See Exh. 34, Affidavit of Trent]. By eliminating hundreds of qualified individual attorneys from the pool of assigned counsel, Defendant Kelly has decreased the number of African-American attorneys eligible to represent children by approximately two-thirds.

118. Understanding the cultural context in which a family lives is vital to representing the best interests of a child. In order to ensure fair and equal representation for

children of color, the legal profession must encourage that judges and attorneys representing the government, parents and children are racially, ethnically and socio-economically diverse and knowledgeable of the role that race, ethnicity and class play in a given situation. *Report of the Working Group on the Role of Race, Ethnicity, and Class*, 6 Nev LJ 634, 636 (2006).

119. In many instances, African-American are better able to communicate with children under the court' jurisdiction. Further, African-American children benefit from seeing African-American people who they perceive as successful.

Plaintiffs Have No Adequate Legal Remedy

120. Plaintiffs reallege and incorporate Paragraphs 1 through 119 of this Complaint, as if fully set forth herein.

121. Plaintiffs in this matter challenge the general practice adopted by the Wayne County Circuit Court, through its local Administrative Order 2006-08, regarding procedures for assignment of counsel for indigent children in child protective and delinquency proceedings.

122. There is no adequate legal remedy to cure the systematic unlawfulness of LAO 2006-08, Sections III.D.2 and 3, other than through this Court's exercise of superintending control, because:

- a) This Court has exclusive jurisdiction to adjudicate the lawfulness or validity of local administrator orders issued by circuit courts. Const. 1963, Art. 6, § 4 and *Lapeer County Clerk v. Lapeer Circuit Judges*, 465 Mich 559, 574 (2002).
- b) The validity of § III.D. of LAO 2006-08, regarding the replacement of individual attorney assignments to represent children as LGAL's in child protective proceedings and counsel in delinquency proceedings, can thus only be ruled on by this Court.
- c) Once the Plaintiff attorneys have been removed as counsel, there is a genuine question as to whether the validity of the Removal Orders are even appealable within

the context of the pending proceedings.

d) The Plaintiff children themselves, and all others similarly situated, are in no position to pursue an appeal on their own to challenge the removal of their LGAL's, and their newly appointed counsel/legal groups, have an inherent conflict between the best interests of the Plaintiff children to retain their original counsel, and their own interests in remaining as the newly appointed LGAL's.

e) Even if the Removal Orders are appealable by the Plaintiff attorneys, and all others similarly situated, the only issue which the Michigan Court of Appeals would legally be authorized to rule on is whether the court below, i.e. Defendant Chief Judge Kelly, abused her discretion by denying the individual attorneys' respective motions to remain as assigned counsel in not finding the requisite "special circumstances," *not* whether the Local Administrative Order itself is legally valid.

Lapeer County Clerk, supra.

f) Based on the 2005 Annual Report for Third Judicial Circuit Court, there is an average between 500 and 2000 child protective cases, and between 1700 and 12,000 delinquency cases pending at any time within the Family Division Juvenile Section of the Wayne County Circuit Court. **[Exh. 21]**.

g) To require each indigent child to file a separate appeal from each denial of each motion brought under LAO 2006-08 § III.D.3, would not adequately remedy the Defendant's overall and systematic unlawful general practice of interfering with the legally protected attorney-client relationships and removing counsel from the representation of their juvenile clients without the statutory finding of good cause on the record.

123. There is no adequate legal remedy to cure the invalidity of LAO 2006-08, Section

III.A, arising from the general unlawfulness of the “group” contract assignment system which awards lump sum fixed fee contracts to alleged “providers of legal services....and other groups....to provide exclusive representation for juveniles....” because:

- a) The vast majority of those assignments have not yet occurred;
- b) The attorney/trial organization parties to this action have no standing to pursue appellate relief since they are not among the groups being awarded the contracts and are, therefore, not interested parties in any of the relevant pending juvenile fee cases where such contracts have been awarded;
- c) The indigent Plaintiff children in this action, and all others similarly situated, who are currently in the juvenile court system have standing only to challenge the unlawful removal of their court appointed counsel pursuant to LAO 2006-08 Sections III.D.2 and 3, and such a challenge does not provide an adequate legal remedy for the reasons set forth in Paragraph 111 above.

124. This Court, in adopting and implementing MCR 3.915(A), [emphasizing the best interests of a child in a delinquency proceeding as the basis for appointment of counsel], and MCR 3.915(D)(2), [placing strict restrictions on the circumstances under which the trial court may permit another attorney to even temporarily substitute for the child’s LGAL], has acknowledged the importance of consistent and continuous legal representation for children in both delinquency and child protective proceedings, because by their nature, children “...don’t have the capacity, maturity, experience or schooling to understand when an attorney is failing to represent their interests adequately.” *In Re AMB*, 248 Mich App 144, 231 (2001).

125. As such, the children who are appointed counsel under the new contract system, LAO 2006-08 Sec. III.A., are not, as a practical matter, going to be in a position, through their newly appointed counsel, to challenge the effectiveness of their newly appointed counsel or, by

extension, the system which has awarded multi-million dollar contracts to the legal groups of which their counsel is a member or an independent contractor. There is created, in other words, an inherent conflict of interest whereby the children/Plaintiffs whose rights to effective assistance of counsel are being, or will be, violated by the adoption of a system which, in essence, awards multi-million dollar contracts to a small number of selective legal groups of which their individual unnamed attorney, who receives a flat fee, is a member or independent contractor.

126. As such, these children have no adequate legal remedy within the context of their own individual pending cases, the overwhelming majority of which are not even pending yet.

127. Even if they could challenge the effectiveness of their individual counsel's representation within the conduct of their own individual cases, they could not seek the relief sought here, i.e. superintending control over the general practices of the Circuit Court, because under the Michigan Constitution, art. 6 § 13, "...the circuit court only has superintending control jurisdiction over lower courts." *Lapeer County Clerk v. Lapeer Circuit Judges*, 465 Mich 559 (2002).

128. A legal challenge to the overall assignment system of counsel created by LAO 2006-08 is thus only properly decided by this Court, pursuant to MCR 2.302(B) and (D).

COUNT I
MICHIGAN JUVENILE CODE:
VIOLATION OF MCLA §§ 712A.13a(c), 712A.13a(g), 712A.17c(2), 712A.17c(7),
712A.17c(9) and 712A.17d

129. Plaintiffs reallege and incorporate Paragraphs 1 through 128 of this Complaint, as if fully set forth herein.

130. The Michigan Juvenile Code, including *inter alia*, MCLA §§ 712A.13a(c), 712A.13a(g), 712A.17c(2), 712A.17c(7), 712A.17c(9) and 712A.17d, establishes that every

child brought under the jurisdiction of the Court, either in a neglect proceeding or a delinquency proceeding, has the following rights, among others:

- a) The right to effective assistance of counsel. This includes the same type of a traditional attorney-client relationship with his/her attorney/LGAL, as identified by the Michigan rules of professional conduct, with undivided loyalty, confidentiality and zealous representation of his/her expressed wishes;
- b) The right to be appointed independent, vigorous and effective counsel, based on a determination as to his/her best interests, rather than based on the interest of the Court or the lowest cost to the government for such representation;
- c) The right to continuity and consistency of representation by his/her attorney/LGAL, without the threat or reality of abrupt unilateral disruption of said representation or interference with the attorney-client relationship, that lacks notice and that lacks a determination of good cause based on the particular circumstances of the attorney's conduct in relation to his/her case.

131. Defendant Kelly had and continues to have a clear legal duty not to violate the aforementioned rights.

132. Defendants, through the adoption of LAO 2006-08, have violated, and continue to violate, the rights of each and every child who has a pending case within the Family Division-Juvenile Section of the Wayne County Circuit Court, under the statutory provisions of the Michigan Juvenile Code, including *inter alia*, MCLA §§712A.13a, 712A.17c and 712A.17d, in the following but not limited ways:

- a) Arbitrarily interfering with the individual attorney-client relationships, breaching their confidentiality through the issuance of the Orders of Removal and orders to turn over privileged attorney's files to unnamed persons or to the court;

- b) Creating a general system of assignment of counsel through private lump sum contracts which result in excessive caseloads and an insufficient number of counsel available to adequately and effectively represent the children in the system, thereby violating the right to meaningful and effective assistance of counsel;
- c) Creating a system in which the primary factor in determining assignment of counsel is based on the lowest cost and best interest of the Court rather than the child, thereby violating the right to meaningful and effective assistance of counsel; and
- d) Creating a system which dispenses with and thereby violates the “good cause” requirement set forth in MCLA §712A.17c (9), by giving the Chief Judge unfettered and undefined discretion to violate, undermine, destroy, interfere with and disrupt, the attorney-client relationship without any determination as to the quality of that relationship, such as a finding of gross incompetence, physical incapacity or contumacious conduct. *People v Johnson*, 215 Mich. App. 658, 662-663, 547 NW2d 65 (1996), *appeal granted in part*, 453 Mich 901; 554 NW2d 321 (1996), *appeal dismissed*, 560 NW 2d 638 (1997).

133. The specific violation of MCLA §712A.17c(9) further violates the law in the following respects, among others:

- a) It shifts the burden of proof regarding removal of counsel in child protective cases from the court to counsel, in direct violation of MCLA 712A.17c(9), which explicitly prohibits the removal of counsel;
- b) It changes the standard under which LGALs might be removed, in violation of MCLA 712A.17c (9), under which LGALs may only be removed for “good cause shown on the record.”
- c) It violates the children’s statutory and constitutional rights to effective assistance

of counsel.

134. As a proximate result of Defendant's wrongful actions and policies as set forth in, but not limited to LOA 2006-08, regarding procedures for the removal and assignment of counsel for indigent children in child protective and delinquency proceedings, Defendant has failed to perform a clear legal duty and there is no other adequate legal remedy available to the parties, save for the relief available through the petition herein.

135. Plaintiffs are without adequate remedy in the premises except by the aid of an order of superintending control.

136. As a proximate result of Defendant's failure to perform her clear legal duty for which there is no adequate legal remedy, Plaintiff children and all others similarly situated are deprived of effective legal counsel.

137. As a proximate result of Defendant's failure to perform her clear legal duty for which there is no adequate legal remedy, Plaintiff attorneys and all others similarly situated are deprived of their ability to effectively represent their clients, to retain control over their files and to fully comport with their ethical obligations to their clients. Without the immediate action of this Court to enter an Order of Superintending Control, Plaintiffs and all others similarly situated will be irreparably harmed.

COUNT II
UNITED STATES CONSTITUTION:
VIOLATION OF PLAINTIFFS' SUBSTANTIVE DUE PROCESS RIGHTS
GUARANTEED BY FIFTH AND FOURTEENTH AMENDMENTS RIGHTS TO THE
UNITED STATES CONSTITUTION

138. Plaintiffs reallege and incorporate Paragraphs 1 through 137 of this Complaint, as if fully set forth herein.

139. The Fifth and Fourteenth Amendments to the United States Constitution protect individuals from deprivation of their property and liberty without due process of law. These

provisions require both procedural due process, which mandates procedural fairness, and substantive due process, which requires the provision of certain fundamental rights.

140. Plaintiffs' interest in effective and adequate representation of counsel is one of the fundamental rights protected by the due process clause of the United States Constitution, as secured by the Fifth and Fourteenth Amendments.

141. As a result of the implementation of LAO 2006-08, Defendants have created a system that violates Plaintiff children's constitutional rights to effective assistance of counsel in the following, but not limited, ways:

- a) By arbitrarily removing assigned counsel from their ongoing cases in violation of MCLA §712A.17c(9), thereby interfering with established attorney-client relationships without any evidence of wrongdoing on the part of the original appointed attorneys and violating Minor Plaintiffs' constitutional rights as a matter of law;
- b) By dramatically reducing the number of individual attorneys, including African-American attorneys, and creating a system which results in excessive caseloads, inadequate flat fee compensation, and financial disincentives for vigorous and effective advocacy;
- c) By appointing groups rather than individuals to represent the children, creating a "revolving door" system of representation and subverting the restrictions on substitution of counsel, thereby interfering with the professional standards regarding the criteria necessary to provide effective and meaningful representation of children; and
- d) By failing to have in place any mechanism for screening conflicts within and among the "group" contractors..

142. As a direct, immediate and proximate result of the Defendant's violation of the Plaintiffs' rights, as secured by the Fifth and Fourteenth Amendments to the Constitution of the United States, they have suffered substantial and serious injuries and will continue to so suffer in the immediate and distant future.

COUNT III
THE MICHIGAN CONSTITUTION:
ARTICLE I, SECTION 17.

143. Plaintiffs reallege and incorporate Paragraphs 1 through 142 of this Complaint, as if fully set forth herein.

144. For all the reasons set forth above, including but not limited to **Count II**, above the defendant's actions and policies violate the due process clause of the Michigan Constitution, contained in Article I, Section 17.

COUNT IV
MICHIGAN JUVENILE CODE:
THE STATUTORY OBLIGATION THAT THE COURT EXERCISES ITS
JURISDICTION IN THE BEST INTERESTS OF THE CHILD/CHILDREN

145. Plaintiffs reallege and incorporate Paragraphs 1 through 144 of this Complaint, as if fully set forth herein.

146. This Court has acknowledged the importance of the Michigan Juvenile Code's philosophy with respect to the interpretation of court rules. MCR 3.902. The philosophy includes the obligation that Michigan Courts take into consideration the best interest of the child or that which is conducive to the child's welfare. This mandate is expressed in numerous statutory provisions, including but not limited to MCLA §§ 712A.1(3); 712A.4(4); 712A.13a; 712A.13b(6); 712A.17(1)(b); 712A.17c(2)(e) and (10); 712A.17d(1)(b); 712A.18f(3); 712A.19a(6) and 712.17.19b.

147. The actions of the Defendant, as described and set forth above, can only be seen as having been undertaken in such a manner so as to have completely failed to take into account

the best interests and welfare of the child/children.

148. This failure has been evident in a number of respects, including but not limited to:

- a) the termination and disruption of long standing attorney client and LGAL relationships, on which the Plaintiff Children and others similarly situated had relied and depended without a hearing, let alone a determination as to whether such terminations and disruptions are in the best interests of the child/children;
- b) the replacement of authentic attorney-client and LGAL relationships with the non-existent relationship between the Plaintiff Children, and others similarly situated, and impersonal and non individual “groups” and other such entities;
- c) the determination that the child/children should be represented by “groups” based upon the lowest cost with no regard to the constitutional adequacy of the services provided.

COUNT V
VIOLATION OF ATTORNEY’S PROPERTY INTEREST IN FILES
AND ETHICAL OBLIGATIONS TO CLIENTS

149. Plaintiffs reallege and incorporate Paragraphs 1 through 148 of this Complaint, as if fully set forth herein.

150. Attorneys’ files are protected by law, especially those containing notes, thoughts, work product and confidential information. Said files are neither the property of the client or the court and, in fact, many documents are stamped “confidential.” To the extent that any files contain information protected by attorney-client privilege, the files may not be disclosed by the attorney to any third party without the express consent of the client.

151. The requirement to turn over documents and materials unduly interferes with the property rights of previously assigned individual attorneys and LGALs without due process of law, insofar as the attorney’s files do not belong to the court, nor do most portions even belong to

the client.

152. Documents within an attorney's file, even those emanating from the court (i.e., orders, petitions, etc.) are likely to contain notes, highlighting or attachments that are protected under attorney work product doctrine.

153. Attorneys must maintain confidentiality with respect to information that is protected by attorney-client privilege. MRPC 1.6. This duty extends beyond the termination of the attorney-client relationship. MRPC 1.9(c)(2).

154. Further, the Michigan Rules of Professional Conduct require safekeeping of client property. MRPC 1.15 and 1.16. Thus, any portions of an attorney's file that are the property of the client must not be abandoned or turned over to others.

WHEREFORE, for these reasons, Plaintiffs respectfully request that this Court:

1. Issue an Order of Superintending Control ordering Defendant to rescind and repeal §§ III A and III D of Local Administrative Order 2006-08 ("LAO 2006-08") insofar as said provisions violate the statutory and constitutional rights of Plaintiffs and all others similarly situated;
2. Reinstate the individual attorneys who have been unlawfully removed as counsel for their juvenile clients;
3. Order that no more removals of counsel be ordered by Defendant Court during the pendency of this matter before this Court;
4. Schedule a discovery time line and evidentiary hearing, insofar as this Court deems necessary and appropriate;
5. Award attorney's fees and costs as provided for under the law; and
6. Order whatever other relief is deemed reasonable and just under the circumstances.

Plaintiffs further request that this Court grant Oral Argument, pursuant to MCR 7.304 (E).

Respectfully submitted,

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