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THE THIRD JUDICIAL CIRCUIT
OF MICHIGAN

April , 2007

Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Attention: Mr. Corbin R. Davis
Clerk of the Court

Re: Trial Lawyers Association of Wayne County Juvenile Court, et al v. Hon.
Mary Beth Kelly, Chief Judge Third Judicial Circuit Court, et al
Supreme Court Docket No. 133616

Dear Mr. Davis:

Enclosed please find for filing on behalf of the defendants in the above-captioned matter, eight copies of defendants' answer to the complaint for superintending control, brief in support of answer, exhibits, defendants' response to plaintiffs' motion for immediate consideration and objections to plaintiffs' first set of interrogatories and first request for production of documents and proof of service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gregory J. Kocab", is written over a horizontal line.

Gregory J. Kocab
Judicial Assistant

enc.

cc: Hon. Mary Beth Kelly — Chief Judge
Bernard J. Kost — Executive Court Administrator
Julie H. Hurwitz, Esq. — Attorney for Plaintiffs

**STATE OF MICHIGAN
IN THE 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 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,

-v-

Docket No. 133616

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

Defendants.

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**ANSWER TO COMPLAINT FOR SUPERINTENDING CONTROL
AND AFFIRMATIVE DEFENSES
BRIEF IN SUPPORT OF ANSWER
EXHIBITS
PROOF OF SERVICE**

**STATE OF MICHIGAN
IN THE 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,

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Defendants.

**ANSWER TO COMPLAINT FOR SUPERINTENDING CONTROL
AND AFFIRMATIVE DEFENSES**

Now come defendants, the Hon. Mary Beth Kelly, Chief Judge of the Third Circuit Court, and the Third Circuit Court, through their attorney, Gregory J. Kocab, Office of the Judicial Assistant for the Third Circuit Court, and for their Answer to the Complaint for

Superintending Control state as follows:

1. Admit in part as to the nature of the challenge, but deny that the plaintiffs have standing to represent "all children who are now or who will be under the jurisdiction of the ... Court ..."
2. Admit in part as to the nature of the challenge, but deny the remainder of the allegations insofar as they amount to legal conclusions.
3. Admit the description of the nature of the challenge, but deny the remainder of the allegations insofar as they amount to legal conclusions.
4. Neither admit nor deny but leave plaintiffs to their proofs.
5. Admit as to the adoption of Third Circuit Court Local Administrative Order (LAO) 2006-08 and that contracts for the provision of counsel for juveniles were awarded, but neither admit nor deny the remainder of the allegations but leave plaintiffs to their proofs.
6. Admit with respect to the articulation of certain factors that were stated in the Court's Request for Proposal, but by way of further answer notes that the plaintiffs omit that one of the other criteria for selection was the "expertise and past experience in providing legal representation to juveniles in general and in particular in Wayne County."
7. Admit that under LAO 2006-08, the Chief Judge of the Third Circuit Court has the authority to remove previously appointed counsel for juveniles but otherwise deny the remainder of the allegations as being untrue or articulating erroneous legal conclusions.
8. Deny for the reason that the allegations are either untrue or are speculative.
9. Admit that some attorney client relationships have been terminated as a result of the implementation of LAO 2006-08 but that such terminations only occurred in post-dispositional proceedings, and otherwise deny the remainder of the allegations as either untrue or stating erroneous legal conclusions.
10. Deny for the reason that the allegation is untrue.
11. Deny for the reason that the allegations are either untrue or are erroneous legal conclusions.
12. Deny for the reason that the allegations are either untrue or are erroneous legal conclusions.

13. Admit that the Supreme Court has jurisdiction over writs of superintending control.
14. Admit, but further assert that none of the various constitutional or statutory cites mentioned have been violated.
15. Neither admit nor deny for lack of sufficient information.
16. Neither admit nor deny for lack of sufficient information.
17. Neither admit nor deny for lack of sufficient information.
18. Neither admit nor deny for lack of sufficient information.
19. Neither admit nor deny for lack of sufficient information.
20. Neither admit nor deny for lack of sufficient information.
21. Neither admit nor deny for lack of sufficient information.
22. Admit.
23. Admit.
24. Admit that Radulovich received orders of removal of assigned counsel, but deny that said orders required her to turn over her files to unnamed counsel. By way of further answer, the orders of removal required her to provide to successor counsel, at most, five documents: the petition and any supplemental petitions; any findings of fact or law; any orders; the most recent court report and the most recent placement information about the juvenile including the name, address and telephone number of the current caregiver.
25. Admit but deny said orders of removal were without good cause.
26. Admit.
27. Admit that Radulovich received an order removing her as counsel for plaintiff Nadia E. Neither admit nor deny the remainder of the allegations for lack of sufficient information, but by way of further answer notes that Radulovich's motion to strike orders of removal included plaintiff Nadia E, and as noted in the Court's Opinion, p 1, n 1, Radulovich chose to base her motion on certain legal arguments and not on the basis of a particularized showing contemplated by LAO 2006-08(III)(D)(3). Further, Radulovich did not seek leave to appeal.
28. Admits that Radulovich received an order removing her as counsel for plaintiff Tommie P. Neither admit nor deny the remainder of the allegations for lack of

sufficient information, but by way of further answer notes that Radulovich's motion to strike orders of removal included plaintiff Tommie P. and as noted in the Court's Opinion, p 1, n 1, Radulovich chose to base her motion on certain legal arguments and not on the basis of a particularized showing contemplated by LAO 2006-08(III)(D)(3). Further, Radulovich did not seek leave to appeal.

29. Neither admit nor deny for lack of sufficient information.
30. Neither admit nor deny for lack of sufficient information.
31. Admit.
32. In part, neither admit nor deny for lack of sufficient information, but deny that Trent was removed without good cause on the record.
33. Admit.
34. Neither admit nor deny for lack of sufficient information.
35. Neither admit nor deny for lack of sufficient information.
36. Neither admit nor deny for lack of sufficient information.
37. Admit.
38. Neither admit nor deny for lack of sufficient information.
39. Admit that Shillingford was removed as counsel from cases but deny that she was removed without good cause.
40. Neither admit nor deny for lack of sufficient information.
41. Neither admit nor deny for lack of sufficient information.
42. Neither admit nor deny for lack of sufficient information.
43. Admit.
44. Neither admit nor deny for lack of sufficient information, but deny that plaintiff Brand was removed without good cause.
45. Admit in part but deny that plaintiff Brand was removed as counsel without good cause.
46. Neither admit nor deny for lack of sufficient information.

47. Neither admit nor deny for lack of sufficient information.
48. Neither admit nor deny for lack of sufficient information.
49. Neither admit nor deny for lack of sufficient information, but by way of further answer state that pursuant to LAO 2006(III)(D)(2) removal of counsel was authorized only in post-dispositional proceedings.
50. Neither admit nor deny for lack of sufficient information.
51. Admit.
52. Neither admit nor deny for lack of sufficient information.
53. Neither admit nor deny for lack of sufficient information.
54. Neither admit nor deny for lack of sufficient information.
55. Admit.
56. Neither admit nor deny for lack of sufficient information.
57. Admit.
58. Neither admit nor deny for lack of sufficient information.
59. Neither admit nor deny for lack of sufficient information.
60. Neither admit nor deny for lack of sufficient information.
61. Neither admit nor deny for lack of sufficient information.
62. Neither admit nor deny for lack of sufficient information.
63. Admit.
64. Neither admit nor deny for lack of sufficient information.
65. Admit.
66. Neither admit nor deny for lack of sufficient information.
67. Neither admit nor deny for lack of sufficient information.

68. Admit.
69. Deny as erroneous the characterization of the Third Circuit Court as a “county court,” but admit that the Third Circuit Court through its Juvenile Section of the Court’s Family Division has jurisdiction over child protective proceedings and delinquency matters arising within Wayne County, Michigan.
70. Admit.
71. Admit that the plaintiffs have reincorporated their previously asserted allegations, and further incorporate by reference the foregoing answers to the previous allegations.
72. Admit.
73. Admit.
- 73(a). Admit as to the accuracy of the cite to LAO 2006-08, but deny the remainder of the allegations.
- 73(b). Admit in part but deny as to characterization of the Chief Judge’s discretion as being “unfettered.”
- 73(c). Admit in part regarding the requirement that attorneys must make motions to remain assigned counsel but deny the remainder of the allegation.
74. Deny for the reason that this paragraph states an erroneous conclusion of law.
75. Admit.
76. Admit, but by way of further answer, the Request for Proposal also required prospective bidders to demonstrate “expertise and past experience in providing legal representation to juveniles in general in particular in Wayne County.”
77. Deny that the Court in awarding contracts under the RFP did not take into consideration the best interests of juveniles.
78. Neither admit nor deny for lack of sufficient information.
79. Admit that the plaintiffs have reincorporated their previously asserted allegations, and further the defendants incorporate by reference the foregoing answers to the previous allegations.
80. Admit that certain organizations have adopted certain standards regarding the effective representation of juveniles, but deny that those standards are legally

binding on this Court or otherwise applicable to this case.

81. Admit that suggestions were made to the Michigan Supreme Court State Court Administrative Office (SCAO), but by way of further answer assert that there is no proof that either the Supreme Court or SCAO adopted these recommendations as binding on Michigan trial courts.
82. Admit the accuracy of the quote from the recommendations issued by the National Ass'n of Counsel for Children, but by way of further answer assert that there is no proof that either the Supreme Court or SCAO adopted these recommendations as binding on Michigan trial courts.
83. Admit the accuracy of the quote from the recommendations issued by the National Ass'n of Counsel for Children, but by way of further answer assert that there is no proof that either the Supreme Court or SCAO adopted these recommendations as binding on Michigan trial courts.
84. Admit that the Muskie School of Public Service at the Cutler Institute for Child and Family Policy and the American Bar Association on Children and the Law (Muskie-ABA) made recommendations to SCAO, but by way of further answer assert that there is no proof that either the Supreme Court or SCAO adopted these recommendations as binding on Michigan trial courts.
85. Admit the accuracy of the quote from the recommendations issued by the Muskie-ABA, but by way of further answer assert that there is no proof that either the Supreme Court or SCAO adopted these recommendations as binding on Michigan trial courts.
86. Admit the accuracy of the quote from the recommendations issued by the Muskie-ABA, but by way of further answer assert that there is no proof that either the Supreme Court or SCAO adopted these recommendations as binding on Michigan trial courts.
87. Admit that the Bureau of Justice Assistance issued a report and that the plaintiffs have accurately quoted from the report, but by way of further answer assert that there is no proof that either the Supreme Court or SCAO adopted these recommendations as binding on Michigan trial courts.
88. Admit that the plaintiffs have reincorporated their previously asserted allegations, and further the defendants incorporate by reference the foregoing answers to the previous allegations.
89. Admit that the Third Circuit Court's Director of Assigned Counsel circulated to then current assigned counsel an e-mail, but deny that this e-mail was in violation of law.

90. Admit.
91. Admit in part but deny that the notice interfered with assigned counsel's ability to represent the best interest of their clients.
92. Neither admit nor deny for the reason that this allegation calls for speculation.
93. Admit in part but deny that removals were not for good cause.
94. Neither admit nor deny for the reason that the Juvenile Task Force Report speaks for itself, but by way of further answer states that one problem identified by the Report was that of the frequency of substituted counsel.
95. Admit, but by further answer note that LAO 2006-08 empowered the Chief Judge to reassign counsel during the post-dispositional stage of a case in order to implement the LAO.
96. Admit.
97. Admit in part but deny that removals were not for good cause.
98. Admit.
99. Deny.
100. Deny.
101. Admit in part but deny that Radulovich only filed her motion on behalf of 35 children, and that the Court's Opinion, p. 1, n. 1, reflects she was representing 63 juveniles whom she purported to represent.
102. Admit that Chief Judge Kelly on January 30, 2007, issued an Opinion and Order denying Radulovich's Motion to Strike Orders of Removal of Counsel, but deny the remainder of the allegations.
103. Deny. By way of further answer state that in numerous cases the Chief Judge has granted motions by counsel to remain assigned to represent a juvenile, that Radulovich in her motion chose only to make legal arguments as opposed to an individual showing why special circumstances would justify the retention of assigned counsel, and that Radulovich chose not to seek leave to appeal the denial of her motion.
104. Neither admit nor deny what motivated the other named attorneys not to bring motions to remain on cases but by way of further answer state that such motions were not futile, and that in numerous cases the Chief Judge had granted motions

- by counsel to remain assigned to represent a juvenile.
105. Admit that the plaintiffs have reincorporated their previously asserted allegations, and further incorporate by reference the foregoing answers to the previous allegations.
 106. Neither admit nor deny for lack of sufficient information.
 107. Neither admit nor deny for lack of sufficient information.
 108. Neither admit nor deny for lack of sufficient information.
 109. Deny for the reason that the contract system was premised on prospective vendors taking into account the time and effort necessary to effectively represent juveniles and using that as a basis for their bid.
 110. Deny for the reason that this is untrue.
 111. Admit.
 112. Admit that the Court does not oversee what private legal groups or non profit corporations pay their attorneys.
 113. Admit with respect to the contents of the Third Circuit Court's 2005 Annual Report, but deny the remainder of the allegations.
 114. Neither admit nor deny because this paragraph sets forth a general legal conclusion.
 115. Admit.
 116. Admit that the Court's proposal did not include a provision for Court oversight of the vendors' attorneys to insure that the vendors' attorneys would not be confronted with a conflict of interest; such, however, is the professional responsibility of the vendors' attorneys, not the Court.
 117. Neither admit nor deny for lack of sufficient information the number of children who are African-American, but deny the remainder of the paragraph for the reason that it is untrue.
 118. Neither admit nor deny because this paragraph sets forth an opinion or legal conclusion.
 119. Neither admit nor deny because this paragraph sets forth opinions.

120. Admit that the plaintiffs have reincorporated their previously asserted allegations, and further incorporate by reference the foregoing answers to the previous allegations.
121. Admit.
122. Deny that the plaintiffs lack an adequate remedy and by further answer maintain that counsel remained free to file motions asking to be retained as counsel and could have raised their legal challenges therein, as was done by Radulovich, and could have sought further relief through applications for leave to appeal any adverse orders entered by the Court. Further, resort to the jurisdiction is unnecessary to challenge the validity of a local administrative order since the substantive merits of a local administrative order could be adjudicated in the course of appellate proceedings in the Court of Appeals.
123. Neither admit nor deny because the allegations state legal conclusions and are based on speculation and by further answer state that these plaintiffs lack standing to represent the interests of children with whom they have no professional relationship.
124. Neither admit nor deny because this allegation asserts a legal conclusion.
125. Deny for the reason that it calls for speculation, and by further answer state that these plaintiffs lack standing to represent the interests of children with whom they have no professional relationship.
126. Neither admit nor deny for the reason that this paragraph states a legal conclusion and is based on speculation, and by further answer state that these plaintiffs lack standing to represent the interests of children with whom they currently have no professional relationship.
127. Neither admit nor deny for the reason that this paragraph states a legal conclusion and by further answer state that these plaintiffs lack standing to represent the interests of children with whom they have no professional relationship.
128. Neither admit nor deny for the reason that this paragraph states a legal conclusion.
129. Admit that the plaintiffs have reincorporated their previously asserted allegations, and further incorporate by reference the foregoing answers to the previous allegations.
130. Neither admit nor deny for the reason that this paragraph states a legal conclusion and by further answer state that these plaintiffs lack standing to represent the interests of children with whom they have no current professional relationship.

131. Admit that the Chief Judge has a clear legal duty not to violate the several statutes cited in paragraph 130.
132. Deny for the reason that this paragraph states erroneous legal conclusions.
133. Deny for the reason that this paragraph states erroneous legal conclusions.
134. Deny for the reason that this this paragraph states an erroneous legal conclusion.
135. Deny for the reason that plaintiffs have an adequate remedy at law.
136. Deny that children are denied the effective representation of counsel for the reason that it is untrue.
137. Deny for the reason that the allegations state erroneous legal conclusions.
138. Admit that the plaintiffs have reincorporated their previously asserted allegations, and further incorporate by reference the foregoing answers to the previous allegations.
139. Neither admit nor deny for the reason that this allegation sets forth legal conclusions.
140. Neither admit nor deny because the identity of the parties asserting the alleged interest is ambiguous and for the further reason that this allegation sets forth legal conclusions.
141. Deny that LAO 2006-08 violates the plaintiffs' children's right to effective assistance of counsel for the reason that each of the subsections of this paragraph states erroneous legal conclusions or factual assumptions.
142. Deny for the reason that this paragraph states an erroneous legal conclusion.
143. Admit that the plaintiffs have reincorporated their previously asserted allegations, and further incorporate by reference the foregoing answers to the previous allegations.
144. Deny for the reasons set forth in answer to paragraphs 138-142.
145. Admit that the plaintiffs have reincorporated their previously asserted allegations, and further incorporate by reference the foregoing answers to the previous allegations.
146. Neither admit nor deny because the allegations set forth legal conclusions.

