

COURT OF APPEALS  
TENTH APPELLATE DISTRICT  
FRANKLIN COUNTY, OHIO

IN THE MATTER OF: ) NO. 03-APF-12-1280  
)  
Andreis Elliott, ) (Regular Calendar)  
)  
(Angela M. Lloyd, ) BRIEF OF APPELLANT  
Appellant). )  
)  
)

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

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## ASSIGNMENTS OF ERROR

### I

By disqualifying privately retained counsel without justifiable cause, the Juvenile Court deprived Andreis Elliott of his right to counsel of choice under state and federal law. [Transcript of October 24, 2003, p. 4, lns. 10-22, p. 5, lns. 1-17, No. 144; Transcript of October 27, 2003, p. 20, lns. 11-14, No. 145]

### II

By disqualifying privately retained counsel without justifiable cause, and in the absence of notice and an opportunity to respond, the Juvenile Court violated the reputational interest of Appellant in contravention of the due process clauses of the Ohio and federal Constitutions. [Transcript of October 27, 2003, p. 20, lns. 11-14, No. 145]

### III

The Juvenile Court erred in denying Appellant's motion pursuant to Civ. R. 52 for findings of fact and conclusions of law regarding the disqualification of Appellant. [Decision and Entry, No. 134]

## **STATEMENT OF ISSUES PRESENTED**

### Assignment of Error I, Issue 1

Whether the trial court erred by depriving Andreis Elliott of his substantive right to counsel by disqualifying Appellant without establishing a legal basis for disqualification.

### Assignment of Error I, Issue 2

Whether the trial court erred by depriving Andreis Elliott of his procedural due process as guaranteed by the Ohio and federal constitutions.

### Assignment of Error II, Issue 1

Whether the trial court violated Appellant's due process rights by disqualifying Appellant without establishing a legal basis for the disqualification.

### Assignment of Error II, Issue 2

Whether the trial court erred by disqualifying Appellant without according her due process of law.

### Assignment of Error III, Issue 1

Whether the trial court erred in denying Appellant's Rule 52 motion for findings of fact and conclusions of law explaining the decision to disqualify Appellant.

## STATEMENT OF THE CASE AND FACTS

On October 3, 2002, Franklin County Children Services filed complaint 02 JU10 14802, in which they alleged Andreis Elliot and to be a dependent minor. Complaint, No. 1. The original dependency action which resulted in Andreis being removed from his mother's care and custody, 02 JU 07 10958, was filed and the Public Defenders Office was appointed simultaneously to act as guardian on July 15, 2002. The original complaint is not a part of the record on appeal as it was dismissed on October 17, 2002 pursuant to R.C. 2151. 28(A)(2)(b). On the same day, the Franklin County Public Defenders Office was appointed to act as guardian ad litem for Andreis. Appointment of GAL, No. 3. On December 19, 2002, Andreis was found to be a dependent minor. Dependency Adjudication, No. 35. An annual review was set for October 3, 2003. Clerks' Scheduling Instruction, No. 32. A continuance was granted re-calendaring the annual review for October 24, 2003.

On October 17, 2003, Andreis retained the services of Angela Lloyd, Appellant, and, through her, the Ohio State University Moritz College of Law Clinical Programs, to represent him as counsel. Retainer Agreement, No. 100. Andreis wanted his own attorney because he believed that his wishes were not being represented to the trial court. Oct. 27, 2003 Tr. p.6, Ins. 1-6, p. 10, Ins. 18-23, No. 145. Andreis sought counsel because, in the roughly 15 months that his dependency case had been open and litigated, he had never met his guardian ad litem. Id. at p.4, ln. 25; p. 8, Ins. 13-17, No. 145. In fact, the guardian ad litem failed to attend the semi-annual review on May 25, 2003. Semi-annual Review, p. 4, No. 45. The guardian also failed to attend the administrative annual review conducted by Franklin County Children Services on September 26, 2003. Semi-Annual Review, p. 4, No. 84.

On October 24, 2003, Appellant appeared with Andreis for his annual review and the scheduled motions hearings, but she was prohibited by the court from entering her appearance, because the guardian ad litem requested that she be prohibited from representing Andreis. Oct. 24, 2003 Tr. p. 4, lns. 10-14, p. 5, lns. 4-17, No. 144. The magistrate ordered an in camera hearing with Andreis for October 27, 2003, and continued the case until October 29, 2003. Id. at p. 6, lns. 5-8, No. 144.

On October 27, outside of the presence of Appellant, Andreis explained to the court that he was concerned that his guardian ad litem, whom he had never met, had failed to articulate his preferences to the court. Oct. 27, 2003 Tr. p. 6, lns. 2-6, p. 7-8 lns. 1-25, 1-11, No. 145. Moreover, he believed that his own wishes were different from those being advocated by the guardian ad litem. Id. at p. 7, lns. 1-25. Andreis repeated to the court that he wanted Appellant to represent him. Id. at p. 12, lns. 7-11, No. 145. After Andreis' testimony, the guardian ad litem moved a second time to have the court disqualify Appellant, stating:

I will not be able to work with [Appellant] because I am filing a complaint against [her] with the disciplinary counsel of the Ohio Supreme Court for [her] actions in this case.

Id. at p. 19, lns. 1-7, No. 145. In response to the guardian ad litem's statement and without a scintilla of evidence being offered in support of the request, the magistrate disqualified Appellant. Id. at p.20, lns. 11-14.

On October 28, 2003, Appellant, at the request of Andreis, moved to stay proceedings and to set aside the magistrate's order disqualifying her. Oct. 27, 2003 Tr. p. 20, lns. 11-14, No. 145. On October 29, Judge Mason granted the stay and ordered that the Motion to Set Aside be calendared. Appellant's Appellate Rule 9(C) Statement, ¶ 11, No. 147. Upon receiving notice of the stay, the guardian ad litem physically prohibited Appellant from meeting with Andreis. Appellant's Appellate Rule 9(C) Statement, ¶¶ 13-15, No. 147. At the hearing before Judge

Mason that immediately followed Appellant’s unsuccessful attempt to consult with her client, Judge Mason vacated the stay and ordered that the Motion to Set Aside be stricken from the court calendar. Appellant’s Appellate Rule 9(C) Statement, ¶ 39, No. 147. Andreis was subsequently appointed substitute counsel; the case was continued; and, Appellant filed a Civ.R. 52 Request For Findings of Fact and Conclusions of Law, in an effort to discern the reasons for her disqualification. Motion for Findings of Fact and Conclusions of Law, No. 116. The trial court denied Appellant’s Civ.R. 52 motion and this appeal followed. Decision and Entry, No. 134.

## ARGUMENT

### FIRST ASSIGNMENT OF ERROR

#### **BY DISQUALIFYING PRIVATELY RETAINED COUNSEL WITHOUT JUSTIFIABLE CAUSE, THE JUVENILE COURT DEPRIVED ANDREIS ELLIOTT OF HIS RIGHT TO COUNSEL OF CHOICE UNDER STATE AND FEDERAL LAW.**

The Supreme Court of Ohio has recognized the gravity of disqualification proceedings by explaining that disqualification “has irreparable and unreviewable consequences for the individual who hired the disqualified lawyer as well as for disqualified counsel.” *Russell v. Mercy Hosp.* (1984), 15 Ohio St.3d 37, 41, 472 N.E.2d 695. Thus, where the minor subject of a dependency proceeding seeks out and retains counsel to ensure that his viewpoint is represented, a court which arbitrarily disqualifies his counsel violates not only the minor’s constitutional rights and other legal rights, but also impugns the entire juvenile court system by denying him a fair hearing which recognizes and enforces his rights. Finally, the capricious disqualification of chosen counsel further undermines the ability of the juvenile system “to effectuate...[a] just

determination,” as it creates the appearance of impropriety and discourages attorneys from representing minor clients from whose case they might be arbitrarily removed. Juv.R. 1(B)

**A. THE MINOR CHILD’S RIGHT TO COUNSEL IS GUARANTEED UNDER STATE STATUTE AND RULE AND BY THE STATE AND FEDERAL CONSTITUTIONS.**

Ohio, through its statutory provisions regarding right to counsel, has chosen to afford an extremely broad right to counsel. *State ex rel. Asberry v. Payne* (1998), 82 Ohio St.3d 44, 46, 1998-Ohio-596, 693 N.E.2d 794; *In re Kriak* (1986), 30 Ohio App.3d 83, 84, 506 N.E.2d 556 (finding “statutory right to . . . counsel in all juvenile proceedings, regardless of whether commitment may result.”). Section 2151.352 of the Ohio Revised Code provides:

\*\*\*[a] child \*\*\* is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152. of the Revised Code and if as an indigent person, any such person is unable to employ counsel, to have counsel provided for the person pursuant to Chapter 120. of the Revised Code.

R.C. 2151.352. Additionally, the Juvenile Rules promulgated by the Ohio Supreme Court advance this statutory scheme by providing that, “every party shall have the right to be represented by counsel.” Juv.R. 4(A). Because a child who is the subject of a juvenile court proceeding is a party to the action pursuant to Juv.R. 2(Y), that child is entitled to counsel.

The Ohio Supreme Court has recently affirmed the right of the child to counsel pursuant to R.C. 2151.352 and Juv.R. 4. In *In re Williams*, the Court held that pursuant to Ohio Revised Code 2151.352, as clarified by Juvenile Rule 4(A) and Juvenile Rule 2(Y), “a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and, therefore, is entitled to independent counsel in certain circumstances.” *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500, 805 N.E.2d 1110, syllabus. Moreover, the Court noted that the child as a party has due process rights worthy of protection. Consequently, issues, like those pertaining to the costs of additional counsel and the need for multiple attorneys when there are

two or more siblings, are merely “peripheral practical considerations [which] fade in importance.” *Williams* at ¶28.

The minor child’s right to counsel under R.C. 2151.352 and Juv.R. 4 is grounded in the guarantees of the due process clauses of the state and federal constitutions. As the Ohio Supreme Court noted in *Williams*, a child who is a party has due process rights entitled to protection. *Williams* at ¶28. Moreover, there is little doubt that “counsel is often indispensable to the realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition.” *In re Gault* (1967), 387 U.S. 1, 40, 87 S.Ct. 1428, 18 L.Ed.2d 527. Thus, where a juvenile is the subject of a dependency proceeding which directly impacts one of his most constitutionally precious rights, his right to have and maintain a familial relationship, it is critical that he have counsel to represent his interests, especially if those interests are not being protected by the guardian ad litem appointed to do so.

In the case at bar, Andreis was the subject of a dependency action. As such, he qualified as a party pursuant to Juv.R. 2(Y) and was entitled to counsel pursuant to Juv.R. 4(A) and R.C. 2151.352. Moreover, there is nothing in the record to suggest that the trial court believed Andreis was not entitled to counsel. To the contrary, after disqualifying Appellant, the magistrate appointed another attorney for the child. Additionally, when the matter came before the judge, he did nothing to disturb the appointment of new counsel. Thus, the issue below clearly is not one of whether the minor is entitled to counsel. This is indisputable. Rather, the issue is whether the juvenile court could disqualify the minor’s counsel of choice without cause.

Furthermore, nothing in R.C. 2151.352 or Juv.R. 4(A) suggests that counsel must be appointed. Rather, it is clear that the minor may retain counsel of his own choosing. The fact that Andreis did not pay for Appellant’s services is similarly inapposite. Appellant serves as the

supervising attorney of The Ohio State University Moritz College of Law Justice for Children Project (“the Project”) which does not charge fees for its services to its minor clients. The Project is thus akin to a nonprofit agency that is solicited by low income clients for services and Appellant is, in effect, a nonprofit attorney entering into contracts to represent clients for no monetary fees. Here, Andreis exercised his right to counsel by retaining Appellant to represent him, as evidenced by Appellant’s retainer agreement. Retainer Agreement, No. 100.

**D. THE TRIAL COURT DID NOT HAVE PROPER GROUNDS TO JUSTIFY DISQUALIFYING COUNSEL.**

The Ohio Supreme Court has held that the effects of disqualification are irreparable both for the client who hired the disqualified counsel as well as for disqualified counsel. *Russell* at 41. Disqualification destroys an attorney-client relationship by depriving a party of chosen representation. *Kala v. Aluminum Smelting & Refining Co.*, 81 Ohio St.3d 1, 6, 1998-Ohio-439, 688 N.E.2d 258, citing *Freeman v. Chicago Musical Instrument Co.*, (C.A. 7, 1971), 689 F.2d 715, 721. Even if competent counsel replaces disqualified counsel, it is impossible to determine based on objective standards the differences between the chosen counsel and the replacement whom the client did not originally wish to retain. *Id.* at 40. In cases where there is a conflict that may prejudice a client, courts may allow clients to waive a conflict of interest or prejudice. *Jackson v. Bellomy* (1995), 105 Ohio App.3d 341, 663 N.E.2d 1328. Therefore, a client’s substantive right to choose counsel and the attorney-client relationship are paramount considerations that should be taken into account in deciding whether to grant a motion for disqualification.

In order to disqualify counsel, the movant has the burden of proof to demonstrate that disqualification is warranted. *Crockett v. Crockett* (Feb. 6, 2003), Franklin App. No. 02-AP-482, 2003-Ohio-585, ¶14. In *Crockett*, the trial court not only overruled a motion for disqualification

when the movant did not present any evidentiary support for a motion to disqualify opposing counsel, it also imposed sanctions for bringing a frivolous motion. In affirming the trial court's action, the Tenth Appellate District found that because the movant brought the motion without any evidentiary support that the motion was frivolous under R.C. 2323.51 because it either 1) obviously serves merely to harass or maliciously injure another party to the civil action, or 2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. In the case at bar, the guardian ad litem offered no evidence whatsoever to support her request for disqualification, other than vague and unsubstantiated assertions that she could not work with Appellant.

Furthermore, the movant must demonstrate that one of three established bases warrants disqualification. First, there must be an actual or potential conflict of interest. Second, when an attorney cannot, or will not, take part in the proceedings with a reasonable degree of propriety, disqualification may be appropriate. Finally, in cases of truly egregious misconduct which is likely to infect future court proceedings, a court may disqualify counsel of choice. *Columbus Credit Co. v. Evans* (1992), 82 Ohio App.3d 798, 808, 613 N.E.2d 671, citing *Royal Indemn. Co. v. J.C. Penney Co.*, 27 Ohio St.3d 31, 34, 501 N.E.2d 617. None of these grounds were alleged, or found by the court in the court's decision to disqualify Appellant. There was, in fact, no basis offered to support for the disqualification of Appellant.

## **2. THERE WAS NO ACTUAL OR ALLEGED CONFLICT OF INTEREST BETWEEN APPELLANT AND HER CLIENT.**

An alleged or actual conflict of interest is the most common basis for disqualification. *Columbus Credit Co.* at 808. Conflicts of interest between an attorney and a client may arise when a lawyer changes firms and has confidential information that is prejudicial to one party, or when an attorney is a necessary witness. See *Kala* and

*Jackson*. The Supreme Court of Ohio has made it clear that even when there is a presumption of shared confidences and a basis to presume a conflict of interest, the moving party must demonstrate an actual conflict. Therefore, when the conflict is based on a lawyer's past relationship, the movant must satisfy a three-prong test to have the lawyer disqualified:

[First] a past attorney-client relationship must have existed between the party seeking disqualification and the attorney he or she wishes to disqualify; [second] the subject matter of the past relationship must have been substantially related to the present case; and [third] the attorney must have acquired confidential information from the party seeking the disqualification.

*Youngstown v. Joenub Inc.* (Sept. 28, 2001), Mahoning App. No. 01-CA-01, 2001-Ohio-3401, citing *Dana Corp. v. Blue Cross & Blue Shield Mut. Of N. Ohio* (C.A. 6, 1990), 900 F.2d 882, 889 and *Morgan v. No. Coast Cable Co.* (1992), 63 Ohio St.3d 146, 162.

A conflict of interest also might arise in instances where an attorney is a necessary witness. *Jackson* at 347, citing *Mentor Lagoons, Inc. v. Rubin* (1987), 31 Ohio St.3d 256, 510 N.E.2d 379. This Honorable Court has explained that a motion to disqualify counsel is only appropriate "when 'a lawyer learns or it is obvious' that counsel may be called as a witness. \*\*\*" *Crockett* at ¶ 13, quoting *Morgan v. N. Coast Cable Co.* (Nov. 15, 1990), Cuyahoga App. No. 57209, affirmed (1992), 63 Ohio St. 3d 146. When this preliminary requirement is satisfied so that it is appropriate for opposing counsel to seek disqualification, "[i]t is the burden of the party moving for disqualification of an attorney to demonstrate that the proposed testimony may be prejudicial to the attorney's client and that disqualification is necessary." *Id.* at ¶ 15. In order to satisfy its burden in cases where disqualification is sought on the basis that an attorney is a necessary witness, the movant must demonstrate that the attorney's testimony is admissible and that none of the

exceptions to DR 5-102 are applicable. *Jackson* at 347-349, citing *Mentor Lagoons*.

Therefore, unless the testimony is necessary, admissible, and prejudicial to the client, disqualification is not necessary. *Id.*

In the case at bar, the guardian ad litem, as the party seeking disqualification, utterly failed to establish any actual or alleged conflict of interest between Appellant and Andreis. There was no evidence presented of shared conflicts. There was no evidence of any past attorney-client relationship between Appellant and any of the other parties involved in the case. There was no evidence that Appellant had a prior relationship with Franklin County Children Services, the Franklin County Public Defender, or the guardian ad litem. Nor was there any evidence that Appellant could be called to testify. There was, therefore, no evidence on which the Juvenile Court could find a conflict of interest warranting disqualification.

#### **4. THERE WAS NO ALLEGED OR ACTUAL IMPROPRIETY ON THE PART OF APPELLANT.**

A movant's mere allegation that an attorney violated the Code of Professional responsibility is not sufficient to demonstrate the necessity of disqualification. The movant has the high burden of demonstrating the necessity of disqualification. An allegation of the appearance of impropriety; an alleged violation of Canon 9, without more, does not meet the standard for disqualification. *Bigham v. Bigham* (Sept. 24, 1992), Cuyahoga App. No. 61086, citing *Crile v Crile* (June 28, 1990), Cuyahoga App. No 57161.

A violation of the Code of Professional Responsibility, alone, should not result in disqualification, unless it is **absolutely necessary**. Furthermore, disqualification should not be based solely upon allegation of a conflict of interest. Even if the requested disqualification is allegedly based on ethical considerations, the party moving for disqualification still bears the burden of demonstrating the need to disqualify counsel. (Emphasis added.)

*Kitts v. U.S. Health Corp.* (1994), 97 Ohio App.3d 271, 275, citing *Centimark Corp. v. Brown Sprinkler Serv., Inc.* (1993), 85 Ohio App.3d 485, 620 N.E.2d 134, syllabus. Thus, without any offer of proof, it is difficult to maintain that a movant has demonstrated that disqualification is absolutely necessary.

In this case, there was no evidence proffered to suggest even the appearance of any impropriety on behalf of the Appellant. The guardian ad litem requested the court to disqualify retained counsel because the guardian alleged she could not work with Appellant. At the hearing on October 27, 2003, the guardian ad litem stated:

\*\*\* the difficulty that I have with all [sic] that transpired [is] because no one bothered to contact the guardian ad litem despite the fact that Ms. Beatty clearly knows that I am the guardian ad litem ... I have voiced my problems with the way the people from the Ohio State University approached this. I have voiced my concerns about them having contact with a minor child without the consent of the guardian ad litem.

Oct. 27, 2003 Tr. p. 17, ln. 25, p. 18, lns. 1-12, No. 145.

The guardian ad litem's comments are mystifying in that Andreis was unrepresented by counsel at the time he contacted Appellant. There is nothing in the record to indicate that the guardian ad litem had been appointed as both attorney and guardian ad litem. Moreover, the guardian ad litem had never spoke to Andreis directly. Oct. 27, 2003 Tr. p. 4, ln. 25, p. 5, lns. 3-5, p. 8, lns. 13-17, No. 145. Having contact with an unrepresented minor client is proper conduct and therefore does not give rise to the appearance of impropriety. Since there was no evidence of any actual impropriety or an alleged impropriety, there was clearly no risk of tainting the proceedings. Therefore, granting the request for disqualification was an abuse of discretion and should be reversed.

**5. THERE WAS NO ALLEGED OR ACTUAL EGREGIOUS MISCONDUCT LIKELY TO INFECT FUTURE PROCEEDINGS.**

Disqualification can be warranted in cases of truly egregious misconduct which is likely to infect future proceedings. *Royal Indemn. Co.* at 34. In *Royal Indemnity*, counsel had his admission to the bar revoked for purposefully misleading opposing counsel as to the existence of documents requested during discovery. *Id.* at 36. The Supreme Court of Ohio held that the misrepresentations constituted “egregious misconduct which could taint and diminish the integrity of future proceedings.” *Id.* The Court further held that his conduct was “sufficiently egregious to support disqualification.” *Id.* Egregious misconduct also includes using mass media to influence prospective jurors and tampering with evidence. *Id.* at 34-35, citing *State v. Kavanaugh* (N.J. 1968), 243 A.2d 225 and *United States v. Madsen* (D. Alaska 1957), 148 F. Supp. 625.

There is no evidence of egregious misconduct on the part of Appellant that could diminish the integrity of future proceedings in this case. There is no evidence that Appellant ever misrepresented herself to the court or to any of the parties involved in the case. There is no evidence that Appellant ever undermined any of the court proceedings. Both the necessity and the desire for counsel were raised by Andreis and acknowledged by the court’s decision to appoint counsel following the in camera interview. Oct. 27, 2003 Tr. p. 4, ln. 25, p. 5, lns. 3-5, p. 8, lns. 13-17, No. 145. Andreis made it clear that his guardian was not conveying his concerns and wishes to the court, as he had never met her prior to the court proceedings on October 24, 2003. *Id.* He further expressed to the court that he had sought assistance in obtaining counsel because he felt unrepresented in the hearing and that he wanted to keep his attorneys from Ohio State. *Id.* at p. 6, lns. 2-6, p.7, lns. 1-4, p. 10, lns. 22-23, p. 12, lns. 7-13. None of the bases for disqualification were alleged (or present) in this case and the disqualification was improper. The guardian ad litem did not make an actual motion, did not present a basis for disqualification and

did not provide any evidence in support of her request. As such, the disqualification of Appellant was unjustifiable.

In the case at bar, Appellant was disqualified without grounds and contrary to the client's express wishes. Oct. 27, 2003 Tr. p. 12, Ins. 7-11, No. 145. On October 17, 2003, Andreis signed a retainer agreement and entered into a privileged attorney-client relationship with Appellant. Retainer Agreement, No. 100. Andreis told the court that he wanted to keep Appellant as his attorney. Oct. 27, 2003 Tr. p. 12, Ins. 7-11, No. 145. Appellant made clear to the court that she was ready, willing, and able to represent Andreis. Oct. 24, 2003 Tr. p. 3 Ins. 1-5, No. 144. Nevertheless, the lower court deferred to the request of the guardian ad litem, who had never met with Andreis (Oct. 27, 2003 Tr. p. 4, ln. 25, p. 5, Ins. 3-4, p. 8, Ins. 13-17, No. 145), and destroyed the established attorney-client relationship by prohibiting Appellant from representing Andreis, thereby denying Andreis his right to counsel.

**E. THE ARBITRARY DISQUALIFICATION OF COUNSEL VIOLATED THE MINOR'S PROCEDURAL DUE PROCESS RIGHTS UNDER THE STATE AND FEDERAL CONSTITUTIONS.**

In considering a request to disqualify counsel, Ohio courts mandate certain procedural safeguards because of the impact on both client and attorney. Thus, a motion must be made and the attorney facing disqualification must be given an opportunity to respond. *In re Skrha* (1994), 98 Ohio App.3d 487, 648 N.E.2d 908. The opportunity to respond requires a full evidentiary hearing. As the Ohio Supreme Court explained in *Kala*,

Finally, the court should hold an evidentiary hearing on a motion to disqualify and must issue findings of fact if requested based on the evidence presented. Because a request for disqualification implies a charge of unethical conduct, the challenged firm must be given an opportunity to defend not only its relationship with the client, but also its good name, reputation and ethical standards.

*Kala* at 12. Under this standard, not only is a motion required by the rules; the Supreme Court of Ohio specifically requires motions and an evidentiary hearing in disqualification proceedings.

Moreover, the Juvenile Court's decision to disqualify Appellant was contrary to the intent of both the Juvenile Rules and Rules of Civil Procedure as promulgated by the Supreme Court of Ohio. Juvenile Rule 19 states that:

[A]n application to the court for an order shall be by motion. A motion other than one made during trial or hearing shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought.

Juv.R. 19, see also Civ.R. 7(B)(1). Such motions are to be served on each of the parties pursuant to Juv.R. 20, to ensure adequate notice and to provide opposing counsel with an opportunity to respond as required by the due process clauses of Article I, Section 16 of the Ohio Constitution. See *Green v. Derr* (Mar. 6, 2000), Hocking App. No. 99 CA 15.

In this case, the lower court failed to follow any of the procedural requirements necessary for the disqualification of counsel. Contrary to the requirements of Juv.R. 19 and Civ.R. 7(B)(1), no written motion was ever filed and at no time was any evidence presented to identify any legal grounds for disqualification. It also is unclear that Andreis knew that the purpose of the hearing was to consider disqualification of Andreis' counsel of choice. At the October 27, 2003 hearing, the Magistrate began the proceeding by explaining that she had Andreis brought to her court to discuss his case.

MAGISTRATE VANDYKE: This matter is Andreis Elliot, case number 02JU-14802. And I asked the folks from Children Services and United Methodist to bring Andreis down to me today so we could chat a little bit because there were people coming and telling me a little of this and a little of that, and I wanted to hear straight from Andreis what's going on.

Oct. 27, 2003 Tr. p. 2, lns. 1-8, No. 145.

Although Andreis was given an opportunity to address the trial court on October 27, 2003, it is clear from the record that he was prejudiced in being forced to appear without the benefit of counsel as his express request to have Appellant serve as his counsel was denied summarily and without grounds. Oct. 27, 2003 Tr. p. 12, lns. 12-13, No. 145. The impromptu nature of the hearing and the need to respond immediately to the guardian ad litem's renewed motion for disqualification without the benefit of counsel blatantly and substantially violated Andreis's procedural due process rights.

The informality of the proceedings also deprived Andreis of the ability to appeal Appellant's disqualification. As Appellant had no notice of the proceedings; was, therefore, not present in the courtroom; had no written motion or record to which she could respond; and, as she was prohibited from speaking with her client, there was no way to present evidence or legal arguments to challenge the disqualification. Therefore, the lower court's disregard for the State procedural due process requirements in disqualification proceedings violated Andreis' procedural due process rights and should be reversed.

The trial court's arbitrary decision to remove counsel also violated the child's federal procedural due process rights. In 1976, the Supreme Court created a three-part balancing test to determine what process is due when an individual has been deprived of a liberty interest.

*Mathews v. Eldridge* (1976), 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18. The three factors set out by *Mathews* are:

[F]irst, the private interest that will be affected through the procedures used; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirement would entail.

Id. at 335. Three critical procedural due process rights are the right to notice, a meaningful hearing, and representation or counsel. *In re Gault* (1967), 387 U.S. 1, 33, 87 S. Ct. 1428, 18 L. Ed. 2d 527. The Supreme Court has thus determined that these rights extend to children when their protected liberty interests are threatened by state action. Id. at 28-31. Thus, as here, where Andreis' liberty interest in maintaining his family's integrity is threatened by ongoing dependency proceedings in which he has no voice, *Gault* guarantees that he has a fundamental right to counsel, especially where the burden to the government of allowing Andreis to appear with retained counsel, is, as here, de minimus. Id. at 28.

In the present case, Andreis was faced with a substantial infringement on his interest in maintaining familial integrity. Without independent counsel for Andreis, he faced a significant risk of remaining in foster care and of eventually becoming the subject of a hearing to terminate parental rights. Yet, by allowing Andreis to retain and appear with an attorney of his choice, the court and the state, at no expense or inconvenience to themselves, would have been able to ensure that Andreis had a fair hearing. Therefore, the Juvenile Court's decision to disqualify Appellant infringed on Andreis' Fourteenth Amendment right to counsel as guaranteed through the Due Process Clause.

### **SECOND ASSIGNMENT OF ERROR**

**BY DISQUALIFYING PRIVATELY RETAINED COUNSEL WITHOUT JUSTIFIABLE CAUSE, AND IN THE ABSENCE OF NOTICE AND AN OPPORTUNITY TO RESPOND, THE JUVENILE COURT VIOLATED THE REPUTATIONAL INTEREST OF APPELLANT IN CONTRAVENTION OF THE DUE PROCESS CLAUSES OF THE OHIO AND FEDERAL CONSTITUTIONS.**

The liberties protected and the rights conferred by the Fourteenth Amendment to the United States Constitution have been found to include more than the mere liberty from

incarceration. *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042; *Smith v. Organization of Foster Families*, 431 U.S. 816, 845, 97 S.Ct. 2094, 53 L.Ed.2d 14. Included among the various liberties sheltered within the due process clause is the liberty to seek and hold specific employment, including the practice of law. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238, 77 S.Ct. 752, 1 L.Ed.2d 796. Thus, disqualification without procedure violates the due process of rights of counsel so disqualified. *State, ex rel. Kura, v. Sheward* (1992), 75 Ohio App.3d 244, 248-249, 598 N.E.2d 1340; *Bernbaum v. Silverstein* (1980), 62 Ohio St.2d 445, 406 N.E.2d 532.

**A. DISQUALIFICATION DOES IRREPARABLE HARM TO AN ATTORNEY AND IS ONLY JUSTIFIED WHEN ABSOLUTELY NECESSARY; AN UNSUBSTANTIATED DISQUALIFICATION IS AN ABUSE OF DISCRETION.**

An attorney's reputation is her most important asset in the practice of law, and a motion to disqualify undermines an attorney's reputation as it calls into question the attorney's integrity and professionalism. *Kala* at 12. When the disqualification is done without reason, the resulting damage remains irreparable. *Russell* at 41. Furthermore, disqualification destroys an attorney-client relationship by depriving a party of chosen representation. *Kala* at 6, citing *Freeman* at 721.

**1. DISQUALIFYING APPELLANT DAMAGED HER REPUTATION.**

The damage to an attorney's reputation when a disqualification motion is erroneously granted is not likely to be remedied. See generally, *Kala*. Such damage to reputation is due, in part, to the fact that the actual bases for disqualification are grounded in some form of attorney misconduct. *Royal Indemn. Co.* at 34. Due to the gravity of disqualification proceedings, the movant must demonstrate that disqualification is absolutely necessary. *Crockett* at ¶ 15. In the present case, the lower court failed to recognize the gravity of disqualification for both the

attorney and the client, and the disqualification caused irreparable harm to Appellant's reputation and to her relationship with her client. Moreover, the lower court disqualified counsel without finding that such action was absolutely necessary. The lower court also granted the guardian ad litem's request without requiring the guardian ad litem to even articulate an actual basis for the disqualification much less to satisfy the burden of proof for disqualification; thus the lower court abused its discretion by making an arbitrary decision to disqualify Appellant without reason. Therefore, the lower court's decision to grant the guardian ad litem's request to disqualify Appellant was arbitrary, constitutes an abuse of discretion, and should be reversed.

In granting the guardian ad litem's request for disqualification, the court damaged Appellant's personal reputation and professional standing as well as that of the Justice for Children Project at the Ohio State University Moritz College of Law. The lower court accepted the guardian's assertion that Appellant should not be permitted to represent the client who requested Appellant's services. The lower court was willing to grant the request of the guardian ad litem without hearing Appellant's objections throughout the course of the proceedings. On October 24, 2003, when Appellant sought to enter her notice of appearance and to explain to the court the reasons for her involvement in the case, the guardian ad litem requested that Appellant not be heard. The court refused to allow Appellant to take any part in the proceedings explaining that with regards to the guardian ad litem the court has "never had a reason to mistrust anything that she's told me." Oct. 24, 2003 Tr. p. 5, Ins. 1-2, No. 144. Thus, the lower court impugned Appellant without requiring the guardian ad litem to provide a legal basis that would necessitate disqualification. Furthermore, not only did the lower court fail to inquire of Appellant any facts regarding her involvement in the case; it specifically prohibited Appellant from taking any part in the proceedings. *Id.* at p. 5, Ins. 9-19. In this manner, the stigma of

disqualification and the resulting damage to Appellant's reputation was endorsed by the court on the recommendation of the guardian ad litem without regard to the facts or the law.

**2. THE LOWER COURT ERRED IN DISQUALIFYING RETAINED COUNSEL WHEN NOT ABSOLUTELY NECESSARY.**

The Supreme Court of Ohio has noted that “disqualification, as a prophylactic device for protecting the attorney-client relationship, is a drastic measure which courts should hesitate to impose except when absolutely necessary.” *Kala* at 6, citing *Freeman* at 721. Disqualification is a grave matter and the moving party must demonstrate the need for disqualification.

The disqualification of counsel is a drastic measure. \*\*\* **When the moving party cannot demonstrate the necessity to disqualify counsel, disqualification is improper.** (Emphasis added.)

*Kitts* at 275, citing *Centimark Corp.* at syllabus. This Court has similarly recognized that “disqualification is a drastic measure which should not be imposed unless absolutely necessary.” *Crockett* at ¶ 12, citing *Spivey v. Bender* (1991), 77 Ohio App.3d 17, 22, 601 N.E.2d 56. Disqualification of counsel is a drastic action because it not only restricts the client's right to chosen counsel, it also does irreparable harm to the reputation of the disqualified attorney. See *Russell* at 41 n. 7.

Abuse of discretion is the appropriate standard for reviewing decisions that grant the disqualification of counsel. A decision made without regard to the facts or law is arbitrary by definition and therefore constitutes an abuse of discretion. *Crockett* at ¶12. The trial court has broad authority to protect the integrity of legal proceedings including the disqualification of counsel when necessary. The trial court's disqualification of retained counsel without some factual basis for the disqualification is arbitrary and constitutes an abuse of discretion.

*Youngstown* at 24. As this Court has explained, a trial court abuses its discretion regarding the disqualification of counsel if the decision is unreasonable because there is no sound reasoning

process to support the decision. *Safelite Glass Corp. v. Kagy*, Franklin App. No. 99AP-875, at 24 quoting *AAA Enterprises, Inc. v. Riber Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 443 N.E.2d 597.

In this case, Appellant was disqualified at the request of the guardian ad litem without any offer of proof as to why such disqualification was necessary. The guardian neither offered, nor did the court explain, why disqualification was necessary. The guardian ad litem requested that Appellant be disqualified because she could not work with her. Oct. 27, 2003 Tr. p. 19, Ins. 1-7, No. 145. The statement itself included no specifics as to why the guardian ad litem could not work with Appellant. Nevertheless, the court granted the request of the guardian ad litem without eliciting any offer of proof as to why such disqualification was “absolutely necessary” as required by law. Since the disqualification in this case was completely unsubstantiated by any alleged or actual factual basis, it cannot, by definition, be shown to have been “absolutely necessary,” and was therefore an abuse of discretion.

#### **B. APPELLANT’S DISQUALIFICATION WAS UNSUBSTANTIATED.**

The party seeking disqualification of counsel bears the burden of establishing that one of three bases for disqualification exists. *Crockett* at ¶24. These three legal bases on which a trial court may disqualify an attorney are (1) when there exists an actual or potential conflict of interest; (2) when the attorney cannot or will not take part in the proceedings with a reasonable degree of propriety; and (3) when truly egregious misconduct is likely to infect future court proceedings. *Columbus Credit Co.* at 808, citing *Royal Indemn. Co.* at 34. If the party seeking disqualification fails to present any evidence for a motion to disqualify opposing counsel, the motion to disqualify is not only properly denied but the trial court also may impose sanctions for bringing a frivolous motion. *Crockett* at ¶¶16-17.

The guardian ad litem provided no evidence whatsoever warranting disqualification of Appellant as counsel for Andreis. The guardian ad litem provided no evidence of any actual or alleged conflict of interest. The guardian ad litem provided no evidence that Appellant would act improperly. The guardian ad litem provided no evidence that Appellant had engaged in egregious misconduct likely to infect future court proceedings. In the absence of any such evidence, the Juvenile Court abused its discretion by disqualifying Appellant.

**C. THE LOWER COURT VIOLATED APPELLANT’S DUE PROCESS RIGHTS BY CONDUCTING AN EX PARTE HEARING ON THE REQUEST TO DISQUALIFY APPELLANT.**

The Supreme Court of Ohio has recognized the necessity of procedural safeguards in considering disqualification motions against counsel due to the drastic nature of disqualifications and the irreparable harm to the attorney’s reputation.

\*\*\* [D]ecisions to disqualify counsel should be made only after a factual inquiry has been undertaken allowing lawyers an opportunity to rebut all inferences of unethical conduct. The *opportunity* to rebut inferences of professional misconduct or impropriety must exist, whether the disqualification motion is directed toward an individual lawyer or an entire firm. \*\*\*

*Kala* at 7, citing *City of Cleveland v. Cleveland Elec. Illuminating* (1976), 440 F. Supp. 193, 209, *aff’d mem.*, 573 F.2d 1310 (C.A. 6, 1977), *cert denied*. 435 U.S. 996, 98 S.Ct. 1648, 56 L.Ed2d 85 (1978). Therefore, even in cases where the underlying facts create a presumption of improper conduct such as when a lawyer actually changes sides in a case, disqualification of counsel at the request of a movant cannot be automatic. The attorney who is at risk of being disqualified must have an opportunity to rebut any allegations proffered. “Because a request for disqualification implies a charge of unethical conduct, the challenged firm must be given an opportunity to defend not only its relationship with the client, but also its good name, reputation and ethical standards.” *Kala* at 12. Despite the reasons for disqualification, the court must provide counsel

with “a hearing to ascertain the facts and circumstances before action is taken to remove counsel from a case even under the exceptional circumstances where such action can be justified.”

*Sheward* at 249.

Ex parte hearings are generally disfavored as they give the appearance of impropriety. “As a general rule of thumb, in all but the most exceptional circumstances, ex parte communications with the court are an extraordinarily bad idea.” *United States v. Carmichael* (C.A.6, 2000), 232 F.3d 510, 517. Such communications undermine the integrity of the judicial system as they undermine confidence in the court’s impartiality regardless of the court’s motives. *Id.* citing *United States v. Earley* (C.A.8, 1984), 746 F.2d 412, 416. Furthermore, ex parte communications create “a gross breach of the appearance of justice” and constitute a “dangerous procedure.” *Id.*, citing *United States v. Minsky* (C.A.6, 1992), 963 F.2d 870, 874.

The procedural requirements for disqualification motions were not satisfied when the Juvenile Court granted the guardian ad litem’s request to disqualify Appellant. The Juvenile Court did not require a written motion. It conducted an in camera interview with Appellant’s client but denied Appellant the opportunity to attend. Appellant was never even allowed to enter an appearance. The absence of any actual motion and the use of an ex parte proceeding to determine the disqualification of retained counsel thus deprived Appellant of notice and an opportunity to respond. Finally, since a legal basis was never presented for the disqualification, the Juvenile Court abused its discretion by disqualifying Appellant.

Furthermore, in this case, the ex parte hearing directly resulted in the disqualification of Appellant thereby impugning Appellant’s reputation and damaging Appellant’s relationship with her client. The Juvenile Court was advised by Appellant’s client of his desire to keep Appellant as his retained counsel. Nevertheless, the court granted the request of the guardian ad litem

without any consideration for Appellant's interests or Andreis' request to keep Appellant as his counsel. Thus, the ex parte hearing undermined the integrity of the system and confidence in the impartiality of the court.

### **THIRD ASSIGNMENT OF ERROR**

#### **THE JUVENILE COURT ERRED IN DENYING APPELLANT'S MOTION PURSUANT TO CIV. R. 52 MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE DISQUALIFICATION OF APPELLANT.**

The Ohio Supreme Court has held, "in ruling on a motion for disqualification of [ ]an individual ... a court must hold an evidentiary hearing and *issue findings of fact.*" *Kala* at syllabus (emphasis added). "Because a request for disqualification implies a charge of unethical conduct, the challenged firm must be given an opportunity to defend not only its relationship with the client, *but also its good name, reputation and ethical standards.*" *Id.* at 12 (emphasis added).

#### **A. WHEN RULING ON A MOTION TO DISQUALIFY COUNSEL, A COURT MUST ISSUE FINDINGS OF FACT.**

Courts throughout Ohio routinely have applied the standard articulated by the *Kala* court to determine whether disqualification is justified. "Traditionally, where there is a conflict of interest, the trial court must hold an evidentiary hearing and issue findings of fact ..." *State v. Condon*, 152 Ohio App.3d 629, 647, 2003 Ohio-2335. A blanket disqualification of state prosecutors constitutes an abuse of discretion in the absence of evidence and the trial court's failure to make findings of fact. See *State v. Hoschar*, Seneca App. No. 13-01-15, 2001-Ohio-2314, at 4; *State v. Adams*, Seneca App. No. 13-01-13, 2001-Ohio-2313, at 4; *State v. Schramm*, Seneca App. No. 13-01-18, 2001-Ohio-2316, at 5; *State v. Frederick*, Seneca App. No. 13-01-16, 2001-Ohio-2315, at 5.

On October 27, 2003, the Juvenile Court magistrate disqualified Appellant without issuing findings of fact with regard to that disqualification. Oct. 27, 2003 Tr. p. 12, lns. 12-13, No. 145. Because the court did not issue findings of fact, Appellant moved for findings of fact and conclusions of law pursuant to Civ.R. 52. This motion was denied by the Juvenile Court Judge on December 1, 2003. Nevertheless, pursuant to *Kala*, after the Juvenile Court ruled on the motion to disqualify, findings of fact should have been issued automatically along with the ruling on the motion to disqualify. *Kala* at 13. The Juvenile Court's failure to issue findings of fact when ruling on the disqualification of retained counsel was therefore erroneous.

**B. BOTH THE CIVIL AND JUVENILE COURT RULES MANDATE THAT FINDINGS OF FACT BE ISSUED WHEN PROPERLY REQUESTED.**

Pursuant to both the Ohio Rules of Civil Procedure Court Rules and the Juvenile Court Rules, when a proper request is made, a trial court must issue findings of fact. Civ.R. 52; Juv.R. 40(E)(2). The Ohio Supreme Court held in *In re Adoption of Gibson*, that “a trial court has a mandatory duty under Civ.R. 52 to issue findings of fact and conclusions of law upon request timely made.” *In re Adoption of Gibson* (1986), 23 Ohio St.3d 170, 173, 492 N.E.2d 146. The Court went on to state that, “the purpose of [Civ.R. 52] is therefore clear: to aid the appellate court in reviewing the record and determining the validity of the basis of the trial court's judgment.” *Id.* at 172, citing *Werden v. Crawford* (1982), 70 Ohio St. 2d 122, 435 N.E.2d 424. Therefore findings of fact and conclusions of law must be issued upon a proper request. Civ.R. 52; *Butler v. Butler* (Nov. 24, 1978), Cuyahoga App. No. 37637; *Dennison v. Dennison* (1965), 165 Ohio St. 146, 149, 134 N.E.2d 574.

Courts have indicated that there are certain situations where a court is not required to issue findings of fact and conclusions of law. For example, “if the record and a well-written trial court opinion ‘provide an adequate basis upon which an appellate court can decide the legal

issues presented.” *Creggin Group, Ltd. v. Crown Diversified Industries Corp.* (1996), 113 Ohio App. 3d 853, 859, 682 N.E.2d 692, citing *Stone v. Davis* (1981), 66 Ohio St. 2d 74, 84-85, 419 N.E.2d 1094; see also *In re Lewis*, (Dec. 20, 2000), Summit App. No. 20046, at 13-14. Nevertheless, Juv.R. 40(E)(2) states that “[i]f any party makes a request for findings of fact and conclusions of law under Civ. R. 52 or if findings and conclusions are otherwise required by law or by the order of reference, the magistrate’s decision *shall* include findings of fact and conclusions of law. If the request under Civ.R. 52 is made after the magistrate’s decision is filed, the magistrate *shall* include the findings of fact and conclusions of law in an amended magistrate’s decision. Juv.R. 40(E)(2)(emphasis added). Moreover, at the request of a parent, the Juvenile Court must amend its decision to include findings of fact and conclusions of law pursuant to Juv.R. 40(E)(2). See *In re Jerry W.* (Aug. 6, 1999), Erie App. E-98-042 at 10-11. Lastly, even the staff notes on the July 1, 1995 Amendments to Juv.R. 40(E)(2) indicate that a magistrate is required to issue “findings of fact and conclusions of law in three specific situations: 1) where the order of reference requires them, 2) where otherwise required by law, and 3) *where findings and conclusions are requested by any party pursuant to Civ.R. 52.*” Juv.R. 40 Staff Note (emphasis added). Therefore, Civ.R. 52 and Juv.R. 40(E)(2) require that findings of fact and conclusions of law be issued upon a proper request.

Furthermore, because disqualification questions are intensely fact specific, a court must make a factual determination in cases of disqualification and provide written findings of fact upon request. See *Kala* at 12, citing *Analytica Inc. v. NPD Research Inc.* (C.A. 7, 1983), 708 F.2d 1263, 1275. Thus, under the Ohio Supreme Court’s holding in *Kala*, the law required findings of fact because the court was ruling on a motion to disqualify. *Kala* at 12.

On October 17, 2003, Appellant was retained by Andreis Elliot. When Appellant attempted to enter her appearance on October 24, 2003, at Andreis' annual review hearing, she was prohibited from so doing. While Appellant attempted to enter her appearance, the guardian ad litem threatened to file a complaint with disciplinary counsel. Oct. 24, 2003 Tr. p. 3, lns.18-22, No. 144. After hearing from the guardian ad litem, the trial court prohibited Appellant from entering an appearance and advised Appellant that she could not participate in the hearing, but that she could "have a seat." Oct. 24, 2003 Tr. p. 5, lns. 10-11, No. 144. Three days later, an in camera hearing was held to determine whether Andreis would be permitted to retain counsel of his own choosing. The Juvenile Court then informed Andreis that he would not be permitted to retain his counsel of choice. Oct. 27, 2003, Tr. p. 12, lns. 12-13, No. 145. After being disqualified and after having her Motion to Set Aside (Motion to Set Aside, No. xxx) removed from the trial court's docket (Appellant's Appellate Rule 9(C) Statement, ¶ x), Appellant moved for findings of fact and conclusions of law pursuant to Civ.R. 52. The Juvenile Court denied this motion. Decision and Entry, No. 134.

The language of Civ.R. 52 supports Appellant's request for findings of fact and conclusions of law as a question of fact, whether or not there were ground for disqualifying Appellant, was tried before the Juvenile Court without the benefit of a jury. In addition, because the trial court did not issue an opinion with regard to the disqualification, and because nothing in the record provides any justification for Appellant's disqualification, the court cannot evade its obligation to issue findings of fact and conclusions of law by hiding behind its judgment on the Motion to Stay. Decision and Entry, No. 134. Findings of fact and conclusions of law should have been issued pursuant to Juv.R. 40 and Civ.R. 52 as a matter of fact was resolved with respect to whether or not grounds existed to warrant Appellant's disqualification. Because both

the Juvenile and Civil Rules mandate that findings of fact be issued when a proper request is made to the court, and because findings of fact must be issued when ruling on a motion to disqualify, the Juvenile Court's failure to issue findings of fact and conclusion of law was erroneous.

**C. FAILURE TO ISSUE FINDINGS OF FACTS CONSTITUTES PREJUDICIAL ERROR.**

The trial court's failure to issue findings of fact and conclusions of law not only constitutes error, but is prejudicial. *Butler v. Butler* (Nov. 24, 1978), Cuyahoga App. No. 37637, at 6. Because the Juvenile Court denied Appellant's motion for findings of fact and conclusions of law, Appellant has been left to speculate as to the reasons for the disqualification. Even after reviewing the transcript of the October 27, 2003 proceedings, from which retained counsel was excluded, there is no indication of the bases on which the Juvenile Court disqualified Appellant. Therefore, the Juvenile Court's failure to issue findings of fact in this case constitutes prejudicial error and must be reversed.

**CONCLUSION**

The Juvenile Court deprived Andreis Elliot of his statutory and constitutional rights by illegally and unjustifiably disqualifying his counsel of choice. The Juvenile Court also violated the reputational interest of Appellant counsel by disqualifying without cause and in the absence of notice and an opportunity to respond. Finally, the Juvenile Court erred by denying Appellant's request, pursuant to Civ.R. 52, for findings of fact and conclusions of law regarding the disqualification of Appellant.

Wherefore, Appellant respectfully requests that this Honorable Court reverse the judgment of trial court and vacate the order disqualifying Appellant and issuing any other orders it deems necessary to resolve the issues before it.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Appellant's Brief* was hand delivered to:

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this 20<sup>th</sup> day of April, 2004.

Respectfully submitted,

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Angela M. Lloyd (Temp. Cert.)  
Supervising Attorney

COURT OF APPEALS  
TENTH APPELLATE DISTRICT  
FRANKLIN COUNTY, OHIO

IN THE MATTER OF:	)	NO. 03-APF-12-1280
	)	
Andreis Elliot,	)	(Regular Calendar)
	)	
(Angela M. Lloyd,	)	<u>BRIEF OF APPELLANT</u>
Appellant).	)	
	)	

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