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October 24, 2023

HAND-DELIVERY

Honorable Judge Aarseth
Alaska Court System
825 W 4th Ave.
Anchorage, AK 99501

Re: **Guardianship Review Hearings with Cache Integrity Services**

Dear Judge Aarseth

We are class counsel in the putative class action *Nick Harp v. Office of Public Advocacy*, 3AN-22-07193 CI.

We are writing in regard to the dozens of guardianship cases in which Cache Integrity Services (the current guardian) has petitioned to be relieved of its appointment as guardian.¹ We understand that you will be hearing these petitions in the very near future.

We want to bring to your attention some critical information. First, there is Judge Gandbhir's September 20, 2023 Order wherein she found that OPA violated controlling law when acting to switch guardians from OPA to Cache. Specifically, Judge Gandbhir found that "OPA did nothing to ensure that the aforementioned procedural safeguards were afforded to [plaintiff]."² OPA's failures included:

- Failing to ensure that the Ward was represented by appointed counsel -- before his guardian was changed;
- Failing to ensure that the Ward received written notice about his right to counsel -- before his guardian was changed;
- Failing to ensure that the Ward received assistance in contacting counsel -- before his guardian was changed;

¹ We understand that there were 59 petitions filed, but we have not been provided a list of the cases.

² Attachment 1, page 3.

- Failing to ensure that the Ward received written notice of any hearing about the proposed changing of his guardian -- before his guardian was changed;
- Failing to ensure that the Ward received written notice of all court hearings and was informed of his right to object to any proposed change of his guardian -- before his guardian was changed; and
- Failing to ensure that the Ward received written notice about the possible consequences of the proposed changing of his guardian -- before his guardian was changed.³

We are concerned that you are now facing déjà vu all over again. Specifically, Cache is now attempting to change guardians in all 59 of these cases -- but none of the 59 Wards have yet been afforded any of the above referenced statutory rights. The Alaska Supreme Court's decision, *In re Protective Proceeding of Amy D.*, sets forth the necessary procedural protections that a Ward must receive before her guardian can be switched.⁴

What is manifest is that all Wards have a right to a hearing and the right to counsel **for** that hearing, unless they knowingly waive that right to counsel -- while before a Judge. It is equally manifest that no lawyers working for OPA can provide independent counsel to any of these 59 wards because OPA's position is that it does not want to accept any of these cases back from Cache. Any OPA lawyer therefore has a non-waivable conflict of interest on this issue or a conflict that must be disclosed to all affected Wards.

These statutory protections are especially critical to the wards in this situation because of misconduct by Cache. On September 19, 2022, Mr. McDuffie of Cache misrepresented to Magistrate Judge Dawson Williams that he had four licensed guardians working at Cache. Judge Williams found that Mr. McDuffie's representations were false and that Mr. McDuffie was the only licensed guardian.⁵ In addition, Judge Williams also found that "[a]fter the appointment [as guardian], Cache Integrity Services did not fulfill its duty."⁶ Judge Williams wrote that he "will review any future requests to appoint Cache Integrity Services with heightened scrutiny."⁷

Thank you for taking the time to review these materials prior to hearing Cache Integrity Services' Petitions for Review. Please let us know if we can be of any further assistance.

³ Attachment 1, pages 3-4.

⁴ *In re Protective Proceeding of Amy D.*, 502 P.3d 5 (Alaska 2022).

⁵ Attachment 2, Master's Report & Recommendation, 3KO-00008-51 PR (February 28, 2023), page 2.

⁶ *Id.*, page 1.

⁷ *Id.*, page 3.

Very Truly Yours,

James J. Davis, Jr.

cc: Thomas McDuffie, Cache Integrity Services w/enc., via email; Noah Star, AAG for Beth Goldstein/Office of Public Advocacy, w/enc, via email; Lisa Wawrzonek, Court Visitor Administrator, w/enc. via email

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

NICK HARP, on behalf of himself)
and all those similarly situated,)
)
Plaintiffs,)
)
vs.)
)
OFFICE OF PUBLIC ADVOCACY,)
)
Defendant.)

Case No. 3AN-22-07193 CI

8

ORDER GRANTING PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Alaska Civil Rule 56(a), plaintiff Nick Harp has moved this Court for partial summary judgment on his first cause of action against the defendant, the Office of Public Advocacy ("OPA"), alleging a violation of AS 13.26.316. This statute requires, in pertinent part, that OPA encourage its wards "to participate to the maximum extent of the ward's capacity in all decisions that affect the ward," and "assure through the initiation of court action and other means that the ward enjoys all personal, civil, and human rights to which the ward is entitled." AS 13.26.316(a), (c)(4).

This Court, being fully advised in the premises, hereby GRANTS the plaintiff's motion, holding that OPA violated AS 13.26.316 as a matter of law based on the following findings:

First, OPA was Mr. Harp's guardian from August 2012 until May 31, 2022.

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
Nick Harp, et al. v. Office of Public Advocacy
Case No. 3AN-22-07193 CI
Page 1 of 4

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Second, on May 3, 2022, in Mr. Harp's guardianship case,¹ OPA moved to resign as Mr. Harp's guardian, and for a private company called Cache Integrity Services to be substituted as his new guardian.

Third, the law required OPA to ensure that various procedural safeguards were afforded to Mr. Harp before the changing of his guardian. These safeguards include:

- A ward is entitled to be represented by an attorney.²
- If a ward is financially unable to employ an attorney, the ward is entitled to a court-appointed attorney.³
- The court must appoint a visitor.⁴
- The court visitor must serve a copy of the petition to the ward.⁵
- The court visitor must explain and provide written notice of a ward's right to counsel.⁶

¹ *In the Matter of Nick Harp*, Case No. 3AN-12-01085PR.

² AS 13.26.226(b).

³ *Id.*; see also *In re Protective Proceeding of Amy D.*, 502 P.3d 5, 10 (Alaska 2022) (holding that the "protective procedures include the appointment of counsel for an indigent person").

⁴ AS 13.26.226(c).

⁵ AS 13.26.231(a)(2).

⁶ AS 13.26.231(a); see also *Amy D.*, 502 P.3d at 10 (Alaska 2022) (holding that the "protective procedures" include "the court visitor's duty to explain to the respondent the scope of the respondent's right to counsel, including the right to have an attorney designated to advise and represent the respondent before and at any judicial hearings.").

- The court visitor must offer assistance in contacting an attorney.⁷
- A ward and their attorney, among others, are entitled to notice of any hearing for any guardianship proceedings.⁸
- Such “notice must set out the date, time, place, purpose, and possible consequences of the hearing and the rights of the ward or respondent and any other parties to the proceedings.”⁹

Fourth, Mr. Harp’s guardian was changed from OPA to Cache Integrity Services on May 31, 2022. Thomas McDuffie, Robert Bond II, and Jody Corazzini of Cache Integrity Services were appointed as Mr. Harp’s new co-guardians.

Fifth, before the changing of Mr. Harp’s guardian, OPA did nothing to ensure that the aforementioned procedural safeguards were afforded to Mr. Harp. Specifically, this Court finds the following undisputed failures:

- Mr. Harp was not represented by counsel.
- Mr. Harp was not appointed counsel.
- Mr. Harp received no written notice from OPA (or anyone else) about his right to counsel.
- Mr. Harp received no assistance from OPA (or anyone else) in contacting counsel.

⁷ AS 13.26.231(a).

⁸ AS 13.26.296(a).

⁹ AS 13.26.296(c).

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- Mr. Harp received no written notice from OPA (or anyone else) about the proposed changing of his guardian.
- Mr. Harp received no copy of OPA's filing seeking to change his guardian to Cache Integrity Services.
- Mr. Harp received no written notice from OPA (or anyone else) of any hearing about the proposed changing of his guardian.
- Mr. Harp was given no hearing to object to the proposed changing of his guardian.
- Mr. Harp received no written notice from OPA (or anyone else) about the possible consequences of the proposed changing of his guardian.
- Mr. Harp received no written notice from OPA (or anyone else) about his rights as to the proposed changing of his guardian.
- Mr. Harp never waived his right to counsel.

Accordingly, partial summary judgment is hereby entered on plaintiff's first cause of action against OPA. Plaintiff's other causes of action against OPA, the question of class certification, and the appropriate relief will remain for future litigation.

DATED this 20th day of Sept, 2022 at Anchorage, Alaska.

I certify that on 9/20/23 a copy of the following was mailed/faxed/hand-delivered to each of the following at their addresses of record.


Administrative Assistant

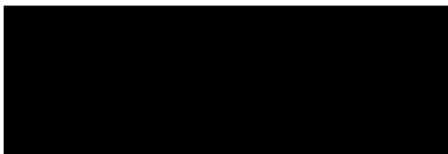
M. Feranti
G. Dudukjian
S. Fletcher
J. Davis
N. Star
A. Miller


UNA S. GANDBHIR
Superior Court Judge

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
Nick Harp, et al. v. Office of Public Advocacy
Case No. 3AN-22-07193 CI
Page 4 of 4

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KODIAK

In the Matter of the Protective
Proceeding of:



CASE NO: 3KO-08-51 PR

**MASTER'S REPORT &
RECOMMENDATION**

On February 28, 2023, the court held a status hearing in this matter, initiated by the previous co-guardians, [REDACTED]. They were present in the courtroom. Appearing telephonically were Mr. Ott, attorney for the respondent; Valerie Brogden, Court Visitor; and for the current guardian, Cache Integrity Services, executive director Tom McDuffie. Wendy Wright and Jody Corazzini were also present telephonically.

This report, accompanied by the log notes from the proceeding, satisfies the requirements of Civil Rule 53. Based on the agreement of the parties, I recommend that [REDACTED] resume their role as co-guardians, and that Cache Integrity Services be relieved of its duty. This recommendation is based on the following:

- 1) On September 19, 2022, [REDACTED] requested to step down from their role as co-guardians so they could focus on their own health issues. They had been serving diligently and effectively since their appointment in 2008. [REDACTED]
- 2) Cache Integrity Services was appointed to take over the role of guardian.
- 3) After the appointment, Cache Integrity Services did not fulfill its duty.
 - a. On behalf of Cache Integrity, Mr. McDuffie argued that they took no action because they had not yet received the appointment orders. The appointment orders were distributed on 9/27/2022, and all other parties confirmed they had received them by e-mail distribution.
 - b. Mr. McDuffie further argued that nobody would accept the orders distributed by e-mail, and he ultimately requested certified copies of

d



the Letters of Guardianship, which were distributed on January 11, 2023.

- 4) In the meantime, [REDACTED] continued to look out for [REDACTED] interests. On January 25, 2023, they filed a request to be reappointed as co-guardians.
- 5) The Visitor's Report includes a letter from [REDACTED] Care Coordinator, Oni Kitsune, who also supports the request. Oni explains that it has taken "a significant amount of extra effort to simply communicate" with Cache Integrity and that Oni has "strong reservations" about Cache Integrity continuing as a guardian.¹
- 6) The court visitor raised a number of concerns regarding Cache Integrity's performance as a professional guardianship organization. *See* REPORT OF THE COURT VISITOR, 2/27/2023.
 - a. On 9/19/2022, Mr. McDuffie represented to the court that he had four guardians working at Cache Integrity, as well as himself.² Upon his representation, the court issued letters of guardianship that included the names of each guardian, including Trudy Storch, Jody Corazzini, and Wendy Wright.
 - b. When that representation was made, Trudy Storch, Jody Corazzini, and Wendy Wright were not licensed professional guardians. Trudy and Jody were not licensed until November, and Wendy was not licensed at any point.
 - c. At the time of the visitor's 2/27/23 report, Mr. McDuffie was the only licensed guardian at Cache Integrity.
 - d. At the hearing on 2/28/2023, Mr. McDuffie explained that he had been operating under a mistaken view that people with pending guardian licenses could serve as licensed professional guardians.
 - e. The Visitor's Report also states the parties have requested that the court file a referral to The Center for Guardianship Certification

¹ Letter from Alaska Community Care, Oni Kitsune, undated.

² Status Hearing, 8:40 AM, 9/19/2022.

regarding Cache Integrity Services and Mr. McDuffie, for their failure to fulfil their role as court appointed guardians.³

- 7) The court recognizes these concerns and will review any future requests to appoint Cache Integrity Services with heightened scrutiny.
- 8) All parties agreed to [REDACTED] resuming their previous role as co-guardians, and ending Cache Integrity's appointment. The parties agreed to waive the 10-day waiting period to file objections. Accordingly, I recommend that the court issue the attached ORDER REMOVING CACHE INTEGRITY SERVICES AS GUARDIAN & RE-APPOINTING CO-GUARDIANS, accompanied by LETTERS OF GUARDIANSHIP OF ADULT.

IT IS SO RECOMMENDED.

2/28/23

Date



[Signature]
Master Dawson Williams

I CERTIFY THAT A COPY OF THE ABOVE WAS:

MAILED TO Barbers
 DEPOSITED IN DISTRIBUTIONARY
CLERK'S OFFICE KODIAK

EMAILED TO JSC partw 3.6.23
DEPUTY CLERK DATE

³ Visitor's Report, p. 6, paragraph 3. 2/27/2023.