

having him appear in person so that they could express it to him directly. Similar sentiments have been expressed during earlier backroom discussions I have attended in this case.

8. During several of these backroom discussions the judge and Marks have made comments that having a hearing is not really that important because John will probably be “released soon anyway” or something to that effect. This was not explained.

9. During the 8/9/16 backroom discussions, Marks claimed he had just that morning learned about the pending Sec. 2935.09 perjury affidavits, petition, and exhibits filed against him and his witnesses although they had been pending in Montgomery County Case No. 2016 CV 02115 since 4/22/16. It’s a matter of record that David Kastner disclosed the Montgomery County filing to the judge and Marks in a 5/31/16 motion in the Ross County case. However, the judge immediately assumed the truth of Marks’ allegations that Marks would be “impaired” in presenting his witnesses and that it was David Kastner who had requested and timed service of documents in that case. Page 1 of the 7/5/16 Decision in that case states:

“attorney Kastner, has requested that the Clerk of Courts ‘hold service’ and asserts that ‘service of process is not required.’ His Instructions to the Clerk are: ‘There are no parties entitled to service.’”

10. Judge Holzapfel’s 8/12/16 Entry says that “The Defendant did not request notice until August 2, 2016” but my review of the pdf docket entries in the Montgomery County case indicate that someone by the name of Lynn Cooper requested service. Nevertheless, on the morning of 8/9/16 Judge Holzapfel seemed convinced that David Kastner had requested service. The judge also kept attributing the filing of the perjury affidavits to our client, John Rohrer, who I personally know knew nothing about them. The transcript of the 8/9/16 proceedings shows that I informed the judge “we’re prepared and would like to go forward.” [Ts. p. 1] At no point on the morning of 8/9/16 or later did I hear Judge Holzapfel express any concern over what the allegedly false testimony that he heard in September, 2014 might be, or whether the statements were true or false. The 8/9/16 transcript does show the judge had concerns over

“the state’s ability to present, as required by law, an evaluation of Mr. Rohrer by these doctors who have been named in this law suit by Mr. Rohrer.”

The judge never stated the source of the law he believed required the State to always present an evaluation, nor am I aware of any.

11. On 8/26/16 Judge Holzapfel scheduled a hearing for 9/9/16 on the defense’s 8/24/16 “Notices & Third Objection to Continuances, Denials of Hearing Rights, & Baseless Incarceration”. I was prepared to argue the points the defense had raised. However, Judge Holzapfel didn’t want to talk about our objections to continuances, though granted for seemingly frivolous reasons, and instead insisted on talking about David Kastner. Jeffrey

Marks, who is still representing Judge Holzapfel in the *procedendo* appeal, began at one point during the 9/9/16 backroom discussions, to wave some papers at me, apparently from the perjury case in Montgomery County. He and/or the judge acted very upset that David had told the Montgomery County court that he was representing John.

12. Although on 8/9/16 there was some discussion of whether Jeff Marks would have to step down due to the perjury allegations, by the time of the 9/9/16 backroom discussions neither Judge Holzapfel nor Jeffrey Marks indicated that the perjury affidavit accusations would be any kind of obstacle for Marks to continue as state's attorney against John Rohrer.

13. Also during the 9/9/16 backroom discussions, the judge seemed to expect me to explain David Kastner's behavior. He even asked me on the record that day to "comment" on David in connection with the perjury case. He seemed upset with David Kastner, but not at all upset that Jeff Marks and his witnesses may have committed perjury in his courtroom in 2014.

14. As he did during the backroom discussions on 9/14/15, Marks indicated in backroom discussions on 8/9/16 and again on 9/9/16 that he had no expert to say John met the statutory definition of being mentally ill other than possibly what Jean Scott, one of the alleged perjurers, would say. During the 9/9/16 discussions, Marks stated he felt obligated to keep John locked up for the 2009 offense John was acquitted of based on the NGRI plea in 2010.

15. During the 8/9/16 backroom discussion, Judge Holzapfel told us that he was considering appointing someone to replace Marks' witness Jean Scott who had been accused of perjury. What the judge kept saying was "I got a guy" who could conduct some kind of psychological evaluation of John. Although I asked, the judge refused at that time to specify who that "guy" was but it was clear that if this person he had in mind agreed to it, the judge had already decided to appoint him.

16. It was not until the backroom discussions on 9/9/16 that this judge first revealed the identity of apparently a new "guy". He named a local psychologist who I had never heard of but who I later learned was an insider in the OMHAS system – one James R. Hagen. I was not prepared to consent or not consent to this individual on 9/9/16 in the backroom moments after first hearing his name because the judge had never mentioned his name beforehand and the Order for Hearing never stated that this would be a topic for the 9/9/16 hearing. I was mostly interested that day in obtaining a hearing date for John and stopping all the last minute continuances. The judge seemed reluctant to give me a hearing date. In order to obtain a date, I felt coerced into adopting a somewhat open attitude towards the unknown James Hagen who the judge hinted would be likely to give an unbiased opinion of John. He even said something like "We might not even have to have a hearing at all." I didn't want to annoy the judge to the point that he would not provide me with a hearing date. So I pushed for a hearing to be set as soon as possible, but the judge said that James Hagen would need at least 30 days pursuant to some unspecified statute, plus another 15 days according to the judge. I then pushed for

October 28 but Jeff Marks announced that October 28 would be impossible for him, even during the day, because October 28 was allegedly Trick or Treat night in Chillicothe. The judge quickly bowed to that impediment and orally gave me a hearing date of November 4. The judge provided me no opportunity to consult with my client who, as it turned out, likewise had no idea who James Hagen was.

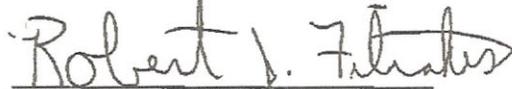
17. I urged this judge to go on the record about re-scheduling for November 4, which we did. On the record the same day – 9/9/16 - I made sure to specifically state that I was reserving the defense right to object to James Hagen. David Kastner filed that objection on 9/21/16.

18. When I received Judge Holzapfel's Entry dated 9/9/16 almost a week after that court appearance, I was quite surprised to see that in the Entry appointing James Hagen there was no date for him to appear. I disagree as to Hagen being characterized as "independent" or as someone I had agreed to. The term "independent" by statute refers to an evaluator selected by the respondent, namely my client. ORC Sec. 5122.01(P). Neither John nor I nor Mr. Kastner knew anything about James Hagen at that time and had certainly not selected him. This judge had not directed that I receive a copy of the 9/9/16 Entry but I received a copy from David Kastner.

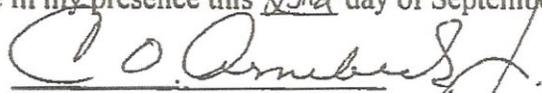
19. The 9/9/16 dated Entry includes not one word about our motions or the continued commitment hearing being scheduled for November 4 as the judge had promised on the record and in the presence of spectators.

20. Nevertheless the docket sheet shows that Judge Holzapfel is ordering my client to be brought over to court on November 4 for what he is calling a "miscellaneous hearing". Once again it remains unclear what this judge intends to do on November 4 and whether there is any point in the defense being ready for a hearing on the merits when Mr. Marks is sure to come up with a reason he will claim for another continuance, and this judge will surely grant it to him.

21. David Kastner and I have for more than a year now divided up the legal work so that what must be done during business hours, I do, and he takes care of most of the filings. Judge Holzapfel seems to be increasingly upset about this arrangement, however, and told me on 9/9/16 something to the effect that he would deal with David later.


Robert J. Fitrakis, Affiant

SUBSCRIBED AND SWORN to before me in my presence this 23rd day of September, 2016.


Notary Public

Clifford Arnebeck

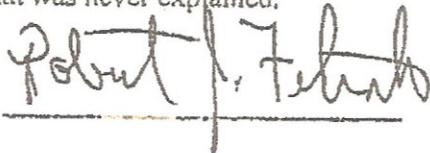
My commission has no expiration date

AFFIDAVIT OF ROBERT J. FITRAKIS

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

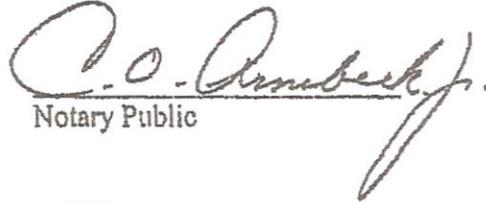
I, Robert J. Fitrakis, being of full legal age and being first duly sworn according to law, depose and state as follows:

1. On 9/14/15 I entered my appearance in Ross County Case No. 09 CR 393 and physically appeared on behalf of my client, John Rohrer, at the behest of his other attorney of record, David L. Kastner, for what Judge Holzappel on 7/30/15 scheduled to be a hearing on John's 3/13/15 Motion to Terminate Involuntary Confinement and/or his 7/24/15 Motion for Default Judgment & Notice of Court's Violation of Rule of Superintendence 40(A)(3).
2. Although the record in 09 CR 393 shows repeated pleadings seeking that all proceedings in this matter be public and of record and with my client present, respondent Holzappel insisted on a discussion of some 45 minutes in duration in chambers on this particular date. There was no record being made and my client and the spectators who had come to attend, were also excluded, except for about a five minute period where Judge Holzappel went on record per my request.
3. During the off-the-record conversation, Judge Holzappel stated he believed he was subject to an "automatic stay" because an appeal is pending before the Fourth District in Case No. 14 CA 3471 as to matters that occurred between 2010 and 2014.
4. Also during that conversation, prosecutor Marks mentioned that none of the reports from ABH, the psychiatric hospital which is confining John, seemed to indicate any reason for concerns about mental illness. Prosecutor Marks expressed no real reason to oppose John's release.
5. Notwithstanding the prosecutor's statement and ongoing refusal to file any responses to the 3/13/15 or the 7/24/15 motions, prosecutor Marks indicated that he believed the State was not in default.
6. Judge Holzappel continued that day to maintain that he was powerless to issue any order or to conduct any proceeding whatsoever.
7. Judge Holzappel and prosecutor Marks periodically referred that day to their belief that "John will be released soon anyway", a statement that was never explained.



Robert J. Fitrakis., Affiant

SUBSCRIBED AND SWORN to before me in my presence this 1st day of
~~September~~, 2015
October


Notary Public

CLIFFORD O. ARNESEK, JR.
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date

AFFIDAVIT OF CALEB S. COPPER

STATE OF OHIO)
) ss:
COUNTY OF ROSS)

I, Caleb S. Copper, being of full legal age and being first duly sworn according to law, deposes and states as follows:

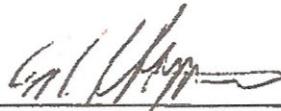
1. I am a longtime resident of Chillicothe, Ohio where I am an ordained minister and small business owner.
2. I have been present in the courtroom during court appearances for John Rohrer since 2015 in Ross County Case No. 09 CR 393.
3. During these court appearances, John and those of us who attend are always excluded while the judge calls the attorneys into the backroom. John is generally brought into the courtroom in chains, to the point where at least in the past, he was not able to use a pen to take notes.
4. I have been prepared on many occasions to be a witness in John's case to testify that he is as sane as anyone I know. I have never been allowed that opportunity, however.
5. I attended the 9/14/15 court appearance in this case expecting to be a witness only to be told, after the backroom conference, that there would not be any court because of the appeal. I never understood why everyone had to be gathered together and inconvenienced just for Judge Holzapfel to announce that he was not going to let John have his hearing.
6. During the court appearance of 8/9/16 I again attended court only to be told, after the backroom conference, that there would not be any court because the assistant prosecutor Jeff Marks had just found out he was accused of perjury, along with his witnesses from 2014. I didn't hear Judge Holzapfel express any concern over what the allegedly perjured testimony that he heard in September, 2014 might be, or whether the statements were true or false. He only seemed upset that David Kastner had filed the perjury affidavits in Montgomery County in April, 2016. I was one of the ones who signed one of the perjury affidavits. Neither I nor the other members of the public present that day who I knew, understood why Mr. Marks could still continue as the state's attorney against John but Marks' witnesses, who were also formally accused of perjury, could not.
7. Also, on 8/9/16 I heard the judge and attorneys when they came back into the courtroom saying that Judge Holzapfel had someone in mind to evaluate John but he would not disclose who it was. At least one of John's other witnesses had come from out of town that day but we all were sent home without even having been given a new date.
8. During the court appearance of 9/9/16 I no longer expected there to be a hearing on

John's liberty. When the attorneys and the judge returned from their backroom discussions, again outside the presence of us and John, it came out for the first time that the judge had picked James Hagen to be the evaluator. I heard Robert Fitrakis say in the courtroom on the record that he was reserving the right to object to James Hagen. It was also said on the record that the next hearing would be November 4 for the 6 month review hearing. But no time was specified for this hearing. No one knows what that hearing is to be about.

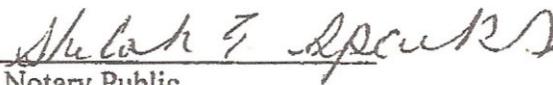
9. I am one of many who is aware of the hostility that the Ross County prosecutor's office has towards John's mother, Katherine Hine, who used to practice law here. I see the same attitude toward David Kastner now – by both the judge and Jeff Marks.

10. I recall during the 9/9/16 courtroom proceedings, the judge seemed to be fishing for Robert Fitrakis to say something derogatory about David Kastner by asking him to "comment" on David in connection with the perjury case, He again seemed quite upset with David Kastner, but not at all upset that Jeff Marks and his witnesses may have committed perjury in his courtroom in 2014.

11. I think it's fair to say that John's case has divided the community. We have held rallies and prayer vigils for John, the last one being in front of the courthouse in June of this year. While we held this last one, one of Judge Holzapfel's staff people came out smirking and began snapping photos of us. There are many in this community who have no confidence that John can receive a fair trial from Judge Holzapfel. Recently, when it was taking too long for David Kastner to receive the Order of 9/9/16 I was asked to pick up a copy of it. I went to get it, because I saw that it was docketed on the online docket, but was told repeatedly that there *was* no such Order. Similar experiences have happened before where the clerks in the clerk's office would prohibit me from getting a copy of something that was public record in the case.


Caleb S. Copper, Affiant

SUBSCRIBED AND SWORN to before me in my presence this 26th day of September, 2016.


Notary Public



SHELAH E. SPARKS
Notary Public, State of Ohio
My Commission Expires 02-13-2021

rb: 9/9/16

IN THE COURT OF COMMON PLEAS

2016 SEP 12 AM 9:10

ROSS COUNTY, OHIO

ROSS COUNTY COURT OF COMMON PLEAS
CLERK OF COURTS
TYI, OHIO

STATE OF OHIO,

PLAINTIFF,

VS

JOHN J. ROHRER,
DOB: 4/29/80

CASE NO. 09 CR 393

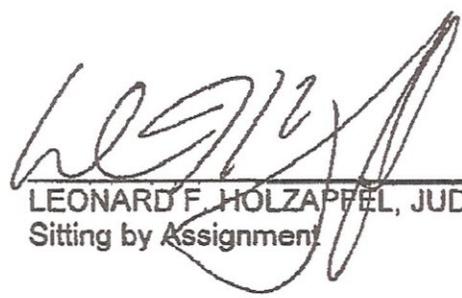
JUDGE HOLZAPFEL
(sitting by assignment)
ORDER FOR WARRANT OF
REMOVAL

DEFENDANT.

* * * * *

The court having scheduled a **MISCELLANEOUS HEARING** in the above captioned case on **NOVEMBER 4, 2016 AT 09:00 A.M.** and it appearing to the court that the defendant is presently confined at the **APPALACHIAN BEHAVIORAL HEALTHCARE, 100 Hospital Dr., Athens, OH 45701**, it is therefore **ORDERED** that the defendant be present before the Ross County Court of Common Pleas by that date and time. **APPALACHIAN BEHAVIORAL HEALTHCARE IS TO TRANSPORT DEFENDANT TO THE ROSS COUNTY COURT OF COMMON PLEAS, COURTROOM #1 BY 8:30 A.M. ON NOVEMBER 4, 2016, AND TO RETURN SAID DEFENDANT TO APPALACHIAN BEHAVIORAL HEALTHCARE AT THE CONCLUSION OF SAID HEARING. ATTENDANTS FROM APPALACHIAN BEHAVIORAL HEALTHCARE ARE TO REMAIN WITH DEFENDANT AT ALL TIMES DURING THE TRANSPORT AND HEARING.**

ENTER: 9/9/16


LEONARD F. HOLZAPFEL, JUDGE
Sitting by Assignment

IN THE COURT OF COMMON PLEAS OF ROSS COUNTY, OHIO

STATE OF OHIO,
Plaintiff,

Judge HOLZAPFEL

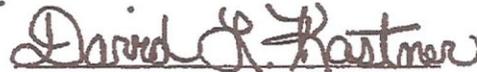
Case No. 09 CR00393

JOHN J. ROHRER,
Defendant.

MOTION TO RECUSE &
NOTICE OF GROUNDS
ESTABLISHING APPEARANCE
OF PARTIALITY OF HEARING
OFFICER

2014 AUG 29 11:11:08
CLERK OF COURT
ROSS COUNTY, OHIO

COMES NOW the defendant by and through his attorney, David L. Kastner, while reserving all of the jurisdictional arguments he has made before this court and before the Ohio Supreme Court in the matter of *State ex rel. Rohrer v. Holzappel*, Sup. Ct. Case No. 14-0268, hereby moves that Judge Leonard Holzappel remove himself forthwith from any involvement whatsoever in any and all proceedings in the above styled case and take all appropriate and necessary steps through the Ohio Supreme Court for the appointment of a successor judge to stand in his place and to hear and decide all pending matters herein, on the grounds contained hereinbelow.



David L. Kastner (#0078355)
Attorney for Defendant
3434 North Drive
Beavercreek, Ohio 45432
dlkastner@sbcglobal.net
937-477-8394

MEMORANDUM

Judge Holzappel was appointed to this matter in December, 2013 in response to motions, including emergency motions, filed by John's prior attorney, on December 4, 2013. A summary of the actions and failures to act, that followed demonstrate a continuing course of judicial misconduct that threatens innumerable substantive and procedural due process and other rights of defendant John Rohrer, to the point that the undersigned can barely keep track of, much less adjust to the violations of law being committed by the assigned judge, to-wit:

I. TIMETABLE OF IMPROPER ACTIONS IN CONTEXT

12/4/13: John's prior attorney files motions seeking a ruling on some eleven (11) purely legal grounds as to the jurisdictional validity of a March 14, 2011 forced drugging "Entry" to which he is subjected.

12/4/13: Defense files an emergency motion for John to have access to his physicians and for transportation to court hearings without being jailed.

12/17/13: Judge Holzapfel schedules a status conference in which he declines to order John transported for the hearing, although the defense has asserted John's right to be present and to be transported without being jailed.

12/30/13: Judge Holzapfel conducts an off-the-record, non-public status conference in John's absence.

12/30/14: Judge refuses to rule on any of the 11 then-known purely legal grounds supporting the motion to stop forced drugging, and also refuses to rule on any of the December 4, 2013 transportation motions, but instead orders an evidentiary hearing for February 27, 2014, knowing that such action prevents John from having access to his expert witnesses and to medical advice.

1/3/14: Judge ignores Ohio Rev. Code Sec. 5122.17's clear prohibition on jailing psychiatric patients such as John, and orders him jailed for the day *after* the February 27, 2014 evidentiary hearing he just scheduled four days earlier.

1/14/14: Defense files its first motion objecting to the jailing order because it also is for the wrong date, citing Ohio Rev. Code Sec. 5122.17, but Judge Holzapfel ignores the motion, keeps the February 28, 2014 jailing order in place, and issues a new jailing order for February 26, 2014.

1/21/14: Defense files request for a pre-trial hearing in order to have some idea of what Judge Holzapfel would consider the burden of proof to be on 2/27/14, whose witnesses would go first, whether John would have access to his doctors, and whether the judge was going to limit the amount of time being allowed to the defense to present evidence. The defense motion requests that the pre-trial be public and on the record.

1/22/14: Judge issues a new jailing order for the day *before* the February 27, 2014 hearing, specifying that he wants John to be "at the Ross County Jail by February 26, 2014".

1/28/14: Judge Holzapfel again refuses to schedule John's access to doctor issue, specifically scheduling a hearing on motions "except those of 12/4/13", thereby excluding the doctor transportation issue.

1/30/14: Transcript of March 4, 2011 forced drugging "hearing" is filed upon defense request and reveals to defense for the first time that no evidence was taken on March 4, 2011.

2/4/14: Defense files a second motion to vacate both warrants of removal, which Judge Holzapfel ignores until February 19, 2014, the day before the undersigned files an original action in the Ohio Supreme Court alleging the absence of jurisdiction to enter the original confinement "Entry" of 2/1/10 or the forced drugging "Entry" of 3/14/11, due to the dimming prospects that these issues would be heard by Judge Holzapfel in light of the growing number of due process violations he is committing.

2/19/14: Judge Holzapfel again refuses to order ABH to transport John to his doctors for medical care, but orders ABH to transport John to court, finally withdrawing the jailing order.

2/20/14: Defense files Petition for Writs in Ohio Supreme Court.

2/20/14: Transcript of January 25, 2010 original commitment "hearing" is filed upon defense request and reveals to defense for the first time that no evidence was taken on January 25, 2010 to support a finding of John's being then "mentally ill" and "subject to hospitalization by court order".

2/21/14. Defense files Notice of Absence of Jurisdiction, and witness list for 2/27/14 proceeding, which includes names of defense's mental health expert. State files no witness list.

2/21/14: Judge Holzapfel conducts pre-trial, refusing to allow it to be public, refusing to allow John to be present for it, and refusing to allow a record. John, his subpoenaed witnesses, and members of the public are forced to remain outside in the hallway, although these rights are fundamental, structural, statutory and constitutional rights *Waller v. Georgia*, 467 U.S. 39 (1984) (right to public trial fundamental), and been previously requested by written motion. Judge Holzapfel continues to refuse to allow John access to his doctors, or to allow testimony from his witnesses present that day who would support the need and propriety of ordering transport to the doctors. Judge Holzapfel states that if the matter goes to hearing on February 27, 2014 the issues would be limited to the "least restrictive alternative" for keeping John confined because of the judge's belief that John was presumed "mentally ill" and "subject to hospitalization by court order". Judge states he has not decided whether the hearing scheduled for 2/27/14 will proceed or not, nor does he state when he will make that determination.

2/26/14: Judge Holzapfel phones the undersigned to advise that the hearing will not proceed the following day.

2/27/14: Judge Holzapfel issues an "Order" vacating the hearing of the same date, and which purports to memorialize what had occurred during the off-the-record February 21, 2014 pre-trial. His "Order" falsely recites that the hearing set for February 27, 2014 could not proceed because a mental health professional "had not yet been retained on behalf of the Defendant". Judge Holzapfel ignores the fact that the defense mental health professional was listed on the witness list. He also ignores the fact that the attorney for the State, who is also the judge's attorney in the Supreme Court case, has never at this point informed anyone as to any of its witnesses. Judge Holzapfel also expresses in the written Order, his erroneous belief that the filing of the original proceeding in the Ohio Supreme Court, though without a stay order, prevents him from acting. Judge Holzapfel issues no ruling on what the burden of proof would be in the event of an evidentiary hearing, although this was one of the purposes of the requested pre-trial. As Judge Holzapfel would later admit during a July 14, 2014 phone conference, he never understood that the Supreme Court action was not an appeal even though he was a named respondent in that case. Judge Holzapfel also would admit during the same telephone conference that he had never understood that he was not stayed from determining his own jurisdiction, despite the fact that the defense makes that clear in a March 4, 2014 Motion attempting to correct the February 27, 2014 Order.

3/4/14: Defense files a request for a further pre-trial in an effort to resolve the doctor

transportation issue, to proffer testimony of witnesses Judge Holzapfel would not allow to testify in support of the transportation issues on 2/21/14, to correct false statements by Judge Holzapfel as to what occurred during the off-the-record proceedings of 2/21/14, to point out that no stay was in place, and to request that the judge determine his own jurisdiction.

3/4/14 – 7/14/14: Respondent continues to refuse to allow testimony about access to medical care, or to acknowledge the existence of the defense emergency motion or any other issue raised by the defense.

4/1/14: Judge Holzapfel, through his attorney, prosecutor Jeffrey Marks, makes the following false or misleading statement to the Ohio Supreme Court, stating that Judge Holzapfel

“ordered evaluations to be conducted to determine whether the Relator should remain subject to the [sic] forced medications order in place and to whether he remained mentally ill subject to hospitalization.”

when there was not then, nor has there ever been such an order.

6/10/14: Defense files emergency motion in another effort to be free of the forced drugging, with new affidavit and letter from Dr. Pinkham indicating new concerns about the drug Risperdal, new concerns about John's health, new concerns that the drugging violated the standard of care, the observation that John no longer appeared to be mentally ill, and that the drugging appeared to be harming John.

6/11/14: Similar emergency motion to stop the forced drugging filed in Ohio Supreme Court.

6/10/14-7/8/14: Judge Holzapfel refuses to acknowledge the existence of the emergency motion.

7/7/14: ABH employee Max McGee files a letter discussing his version of confidential treatment information with the court clerk, without obtaining consent from patient John Rohrer to disseminate this information. In the letter he seeks to persuade Judge Holzapfel that John is “dangerous” for resisting the ABH assault teams that take patients to the ground to force drug them, claiming that John should therefore be sent to the criminal wing of Twin Valley hospital.

7/8/14: Judge Holzapfel sends an email to his attorney, Jeffrey Marks, who is also the prosecutor, and to the undersigned, purporting to schedule a July 15, 2014 hearing on the letter of a non-party. Although he undersigned is scheduled to be out of state from July 15 through July 18, Judge Holzapfel presses the undersigned to engage in several telephone conference calls on July 14, 2014 and on July 18, 2014.

7/11/14- 8/27/14: Judge Holzapfel issues repeated orders for hearings requested by the non-party, Max McGee, who has filed no motion or memorandum, the judge repeatedly scheduling these events for dates in which the undersigned is either out of state or in the hospital or otherwise unable to attend. Judge Holzapfel refuses to address the issues of due process and statutory violations, including HIPPA and Ohio Rev. Code Sec. 2317.02 violations that are committed by the filing and scheduling of the letter of this particular non-party. The defense is required to file

some five (5) motions objecting to the lawfulness of scheduling of these proceedings, including some filings having to be prepared while the undersigned is in the hospital. Judge Holzapfel continues to refuse to first determine whether he has subject matter jurisdiction before scheduling at least 3 of said hearings.

7/14/14: Judge Holzapfel says for the first time that he will consider granting transportation orders to John's doctors, but by this time Drs. DeMio and Della Mora are tired of trying to accommodate to the obstacles and delays of ABH with Judge Holzapfel's backing, and do not want to participate.

7/25/14: Judge Holzapfel issues a third jailing order for John's appearance of July 30, 2014

7/30/14: Defense prepares and files a third motion objecting to further jailing orders. Judge Holzapfel issues a proper order for transportation to court on 7/28/14 but does not withdraw the 7/25/14 jailing order.

7/30/14: Judge Holzapfel holds a "status conference" during which he schedules a "placement hearing" to accommodate to a non-party although he has still not decided whether he has subject matter jurisdiction to act. Although he allows the hearing to be public and allows John to be present, he permits or directs law enforcement to keep John's hands chained to his waist, and leg shackles, thereby preventing John from meaningfully participating in the hearing by taking notes or writing notes to counsel.

8/5/14: Judge Holzapfel issues an Order in which he continues to refuse to address whether he has subject matter jurisdiction, or any of the *purely legal* issues briefed as to the absence of jurisdiction to have issued the original forced drugging "Entry" of March, 2011, and instead sets an *evidentiary* hearing for September, 2014 on "continued forced drugging" in which he ignores the clear directives of the leading case of *Steele v. Hamilton County Mental Health Bd.* 90 OhioSt3d 176 (2000) as to burden of proof always remaining with the prosecution even in continuation hearings, and instead unlawfully assigns the burden of proof regarding "continuation" of forced drugging to the defense, having never required the prosecution to file a motion seeking forced drugging.

8/7/14: Judge Holzapfel schedules a "placement hearing" for 8/22/14 to accommodate to the non-party, Max McGee, a non-attorney acting as counsel for ABH, ignoring the fact that he has two days earlier already scheduled John to be transported for a doctor examination on the same date, then ignoring until August 21, 2014, the defense's August 12, 2014 motion to vacate the "hearing" set on August 22, 2014 due in part to that conflict.

8/20/14: Defense files a motion to correct Judge Holzapfel's assignment of the burden of proof to the defense as to the unpled "continuing forced drugging" that is not before the court and his continuing refusal to rule on the original jurisdictional invalidity of the March, 2011 "Entry" fragment purporting to authorize forced drugging, which has been on file since December, 2013. The defense again informs Judge Holzapfel that the leading case addressing these issues is *Steele v. Hamilton County Mental Health Bd.* 90 OhioSt3d 176 (2000), which requires the burden of proof on forced drugging, like commitment, to always remain with the prosecution.

8/22/14: Judge Holzapfel finally issues a decision as to the jurisdictional validity of the February 1, 2010 confinement "Entry" based on a January 25, 2010 proceeding in which no evidence was presented. Instead of addressing the absence of evidence apparent from the transcript, or any of the other numerous constitutional and statutory rights violations briefed by the defense, including the failure to inform John of his right to cross-examine, Judge Holzapfel's decision ignores every single legal argument briefed by the defense and decides there is jurisdiction based on the date of the "proceeding". Judge Holzapfel's decision on jurisdiction also ignores the jurisdiction to enter the March 14, 2011 forced drugging "Entry", although he has all the defense briefs on that issue and the prosecutor elected not to file an opposing memorandum.

8/27/14: Judge Holzapfel denies defense's fifth motion to vacate the "placement hearing" not initiated by any motion as required by due process and State and local court rules, ignoring the toll that his actions are taking on the ability of the undersigned to be effective counsel and prepare for further hearing when he is constantly diverted by having to oppose Judge Holzapfel's chaotic scheduling orders. Judge Holzapfel continues to refuse to consider, or even schedule for consideration, the jurisdictional invalidity of the original forced drugging order, and continues to ignore the clear error of law in wrongfully assigning to the defense the burden of proof as to the unpled "continuing forced drugging".

II. APPEARANCES OF IMPROPRIETY

A. Canon 1 of the Code of Judicial Conduct

Canon 1 of the Code of Judicial Conduct states that

"A judge Shall Uphold the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." [emphasis supplied]

Comment 5 to Canon 1 also prohibits

"Actual improprieties [which] include violations of law, court rule or provisions of this code.

Judge Holzapfel has been committing actual violations of law by ignoring the statute that prohibits him from unlawfully ordering John jailed even when it was brought to his attention repeatedly by defense motion. He is committing further violations of law by disregarding core, fundamental due process rights, such as by refusing to provide a record, refusing to allow proceedings to be public, and his ongoing refusal to allow John to meaningfully be present during or to prepare for proceedings which threaten more of his liberty, by literally keeping him in chains and allowing ABH to keep him drugged and stripped of his right to access to legal materials.

Actual violations of law continue to occur because Judge Holzapfel either does not know or chooses to ignore, the fact that the leading case of *Steele v. Hamilton County* provides the only legal authority to arguably justify forced drugging, without which the State has no power to force

drug or to continue to force drug. He continues as of this writing to ignore the other dozen or so statutory and state and federal constitutional grounds establishing that forced drugging is and always has been unlawful in this case. Whether Judge Holzapfel simply does not know the law in this area, though it has been brought to his attention repeatedly, or he chooses to disregard it for other reasons, possibly believing that he is merely creating “harmless” error, the impropriety and appearance of impropriety remain. Judge Holzapfel’s conduct in disregarding basic rules of pleading, as far as the non-party MaxMcGee, is another more recent example of violations of law, which together with his other violations of law, create the cumulative negative effect not only on the due process rights of John Rohrer, but also on the appearance of impropriety that such due process violations display.

The persistent, dogged nature of Judge Holzapfel’s refusals to follow the law are also particularly displayed in his August 22, 2014 ruling in which he ignores the legal effect that a complete absence of evidence has upon the integrity of any hearing. Judge Holzapfel’s insistence on violating the law, as he has been doing with his unlawful jailing orders, as he continues to do by distorting the forced drugging issue into something it is not, and by his now expressed belief that decisions can be lawfully made without proper notice, procedural protections, or even evidence, is hardly an example of a mere “good-faith errors of fact or law” about which reasonable legal minds might disagree.

Comment 3 to Canon 1 states that the appearance of impropriety is created by

“Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge.”

The spectacle of Judge Holzapfel being a client of prosecutor Marks, while prosecutor Marks also represents ABH (at least when ABH is not being represented by the non-attorney Max McGee) hardly inspires public confidence in the independence or impartiality of the judiciary. When these relationships are then taken in the context of Judge Holzapfel’s unexplained haste in scheduling ABH’s letter for a proceeding that threatens John Rohrer’s liberty interests when he has ample reason to know that John would not have effective counsel for such a hearing until the September 12, 2014 proceedings commence, is squarely in the category of conduct that creates the appearance of impropriety. Judge Holzapfel never explains his urgency in scheduling Max McGee’s letters, his disregard of Ohio Civil Rules 6 and 7 or Local Rule 11 in so doing, or his statement during the July 30, 2014 proceeding:

“I believe the court should address that [Max McGee’s letter] before the September 12th hearing, and that’s the issue of whether your client should be moved to another location.” [Ts. p. 30]

He even explored the possibility of obtaining the agreement of the undersigned to waiving a hearing on the matter, stating he wondered whether

“should we address that in a formal hearing - -“ [Ts. p. 31]

Judge Holzapfel's refusal to sanction ABH for HIPPA and Ohio Rev. Code Sec. 2317.02(B) violations of John's rights to confidential patient treatment record, though objected to repeatedly by the defense, is yet another example of Judge Holzapfel's refusal to follow, or perhaps even to know, the law in this critical area of the case. E.g. *In re Miler* 63 Ohio St.3d 99 (1992); *Harness v. Harness* 2001-Ohio-2433 (4th App. Ross Cty, 6/4/01). It is also an example of gross partiality towards a non-party, which is creating the distinct appearance of impropriety, bias, and unfairness.

B. Rule 2.2 of the Code of Judicial Conduct

Rule 2.2 of the Code provides that

"A judge shall uphold and apply the Law, and shall perform all duties of judicial office fairly and impartially."

This Rule is comparable to Ohio Canons 3(B)(2) and (B)(5). Canon 3(B)(2) which specify a judge's duty to be competent in the law and *avoid being swayed by outside influences*. The first sentence of Canon 3(B)(5) requires a judge to perform judicial duties without bias or prejudice. By contrast, Rule 2.2 addresses these duties in terms of a judge's responsibility to uphold and apply the law and perform all judicial duties fairly and impartially. Avoiding external influences and maintaining competency are addressed by Rules 2.4 and 2.5 respectively.

C. Rule 2.3 of the Code of Judicial Conduct

Judge Holzapfel's blatant deference to ABH's Max McGee, besides suspending any need for Max McGee to comply with statute, civil rule, local rule, or due process, appears to also be related to the common tendency to stigmatize and discriminate against those "regarded as" "mentally disabled" within the meaning of the Americans with Disabilities Act. The applicability of the ADA in this case to efforts to falsely demonize John as *currently dangerous due to his supposed membership in a class of individuals deemed "mentally disabled"*, has been briefed and made known to Judge Holzapfel since the defense's December 4, 2013 pleadings. Judge Holzapfel ignores the ADA's zero tolerance for attributing negative characteristics to disadvantaged groups which is not based on empirical evidence. Judge Holzapfel's repeated and persistent displays of discrimination, including the frank hostility of his orders of illegal jailing, refusals to address the cruel brain damaging drugging, and his condoning of the current degrading and unnecessary practice of chaining John in the courtroom, besides exemplifying a refusal to follow the law, all implicate Rule of Judicial Conduct 2.3 prohibiting judges from displaying bias, prejudice, or harassment. In pertinent part this rule provides as follows:

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do

so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include, but are not limited to: epithets; slurs; demeaning nicknames; **negative stereotyping**; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] **Harassment**, as referred to in divisions (B) and (C), **is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.**

The errors of law and fact that Judge Holzapfel has been making have been so numerous and persistent that they may not reasonably be considered to be good faith errors of law or fact. He has been making errors that lead in one direction and one direction only – to violate the constitutional and human rights of John Rohrer, apparently at least in part because of the negative stereotyping his rulings and other conduct reflect, and which stereotyping is also being promoted by the prosecutor, who has served as legal counsel for both ABH and Judge Holzapfel. Judge Holzapfel's conduct often displays pre-conceived ideas about the supposed but non-existent connection between the perception of "mental illness" and violence, a stereotyping endorsed by ABH. Judge Holzapfel's conduct in committing structural error of constitutional dimension by refusing to conduct hearings in which John may meaningfully participate, by jailing him, chaining him, taking away access to legal materials that would be unthinkable for a convicted defendant, by hurrying to have an inadequate "hearing" in which John will be labeled as "dangerous" without actual evidence of such, all give the distinct appearance that the court views John in a negatively stereotypical way, all of which jeopardizes all of John's other legal rights as he faces the prospect of a "hearing" to be conducted by a biased hearing officer with a long track record of ignoring the law and facts. The prospect of such a hearing jeopardizes John's liberty interests.

The purpose of Rule 2.4 is

"not only that actual external influences should not influence a judge in the performance of his or her judicial duties, but the judge should not give the impression that he or she can be influenced by persons or organizations or permit others to do so"

[Comment to Rule 2.4]

The record provides the unmistakable appearance that Judge Holzapfel is being influenced by Max

McGee, ABH, and the prosecutor.

D. Rules 2.5, 2.6, 2.9, and 2.11 of Judicial Conduct

Rule 2.5 requires “competence” and “diligence”, not haphazard scheduling with conflicting dates, with little if any effort to spare litigants, their attorneys, and witnesses, the inconvenience and expense associated with last-minute continuances of hearings that could have been avoided entirely or properly been combined with other hearings dealing with overlapping issues. Comment 4 to Rule 2.5 indicates that a judge who is competent and diligent

“must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.”

Judge Holzapfel’s conduct in disregarding law and avoidance of making needed preliminary decisions appears to have also contributed to the chaos surrounding the scheduling of the February 21, and 27 proceedings, and the 5 or so settings of the Max McGee letter, which are ongoing. A significant amount of time and prejudice to litigant rights could have been spared, for example, had Judge Holzapfel simply resolved the transportation of John to his doctor issue in December, 2013, instead of waiting until August, 2014 to finally do so.

Rule 2.6 is also very much implicated in this matter, as this rule requires a judge to “ensure” the litigant’s right to be heard, i.e. his right to access. Instead, Judge Holzapfel has laid obstacles in John’s path to a full and fair and prompt consideration of his purely legal motions, and then, if deemed necessary, his right to access a full and fair evidentiary hearing.

Rule 2.9 is a virtual blanket prohibition on *ex parte* communications. Particularly when, as here, the nature of those *ex parte* communications is privileged, and pertains to “substantive matters” as to issues on the merits. Although not in evidence and privileged, Judge Holzapfel has permitted the prosecutor to communicate “reports” that are substantive and privileged and never admitted into evidence. It is not known whether the supposedly 5 year old material that the prosecutor has recently found somewhere is what it purports to be, or whether Judge Holzapfel is considering it. It is no answer that the undersigned has received a copy of it. It is improper for the judge to consider it. Yet the dangers of *ex parte* communication, simply by virtue of having been made, lie in the fact that the communication lends itself to the appearance of impropriety and partiality towards the communicator of the *ex parte* information.

To conclude, Rule 2.11 mandates that

“A judge shall disqualify himself . . . in any proceeding in which the judge’s impartiality might reasonably be questioned”.

Moreover it has long been recognized that having a biased trial judge constitutes a fundamental, structural violation of due process. E.g. *Tumey v. Ohio*, 273 U.S. 510 (1927)). The appearance of bias on the part of Judge Holzapfel in this case can no longer be reasonably questioned, as it is

displayed by his longstanding pattern in this case by making repeated non good-faith errors of law, consistently side-tracking defendant's access to rulings on legal matters, thereby blocking John's access to evidentiary hearings by refusing to consider most of defendant's motions and memoranda, by ordering John jailed long after the illegality of this was pointed out to Judge Holzapfel, by repeatedly and for long periods of time ignoring John's right to medical care and evaluation having reason to know this would endanger John's health, life and due process hearing rights, by insistence on issuing orders that ignore statutes, including the acknowledged leading case of *Steele*, and by his refusal to this day to consider the jurisdictional validity of the March, 2011 forced drugging "Entry", though having reason to know from the unopposed record that John is being harmed medically by these tactics.

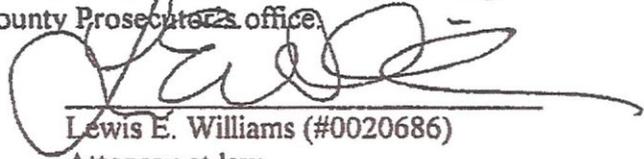
Moreover Judge Holzapfel compounds the errors of law and of fact he commits, to the prejudice of John rights, while he displays gross partiality towards a non-party, to whom he continues to defer, ignoring the fact that judicial resources would be spared by scheduling any issues raised by ABH together with the issues in September, 2014. The urgency and dogged perseverance with which Judge Holzapfel pursues his admitted but unexplained zeal in scheduling a hearing for Max McGee *prior to* September 12, 2014, to transfer John to a maximum security facility without there being any fact-based allegations that John poses a risk of imminent harm to anyone, raises serious questions of due process. Why is Judge Holzapfel intent on scheduling a hearing for a non-party, without proper advance pleadings, the result of which would be destabilizing for any litigant? Why is this result necessary to achieve just prior to the primary hearing to in which the state will have to prove John is "mentally ill" and "subject to hospitalization by court order"? Why does two weeks make such a difference?

Whether considered separately or taken cumulatively, Judge Holzapfel's persistent course of conduct in this case creates an unmistakable appearance of impropriety, bias, and inability or unwillingness to follow the law, all of which factors are actively interfering with the ongoing ability of the undersigned to even keep track of the violations of John's rights, much less, to effectively protect his interests as his counsel.


David L. Kastner

CERTIFICATION

This is to certify that on this 29th day of August, 2014, on behalf of attorney David L. Kastner, I hand delivered a true and correct copy of the above and foregoing "Motion to Recuse & Notice of Grounds Establishing Appearance of Partiality of Hearing Officer" to Judge Leonard Holzapfel and to a representative of the Ross County Prosecutors office.



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