

Introduction to Motion for Access

After the temporary guardians told us that the "Visitation/Contact Request Form" applied to us, we filed a Motion seeking access to Jenny. We also argued that denying us access had harmed our ability to prepare for trial and used that harm as an additional support for our previously filed Motion for a Continuance.

At a hearing, the temporary guardians' counsel argued that the Visitation Form and its Rules of Conduct were appropriate. The Court granted our Motion and ordered the guardians to allow us to see our client and discuss the case with her, without preconditions.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

JULIA S. ROSS and)	
RICHARD W. ROSS,)	
)	
Petitioners,)	Fiduciary No. CWF-120000-426(DP).
)	
v.)	
)	
MARGARET J. HATCH)	
)	
Respondent.)	
)	

**RESPONDENT'S MOTION FOR ACCESS TO HER COUNSEL AND
SUPPLEMENT TO MOTION FOR A CONTINUANCE**

COMES NOW, your Respondent, Margaret J. Hatch ("Ms. Hatch"), by counsel, and files this Motion seeking access to her counsel and supplementing her previously-filed Motion for a Continuance. Ms. Hatch states as follows:

I. Summary of Motion

1. Petitioners will not allow Ms. Hatch to meet with her counsel unless counsel completes a "Visitation/Contact Request Form" ("The Form"). The Form states that, as a condition of being permitted to meet with Ms. Hatch, counsel may not discuss this case with her.
2. By forbidding Ms. Hatch from discussing this case with her counsel, Petitioners are improperly interfering with her right to defend herself by presenting evidence, testimony and argument and her right to counsel. See, Va. Code Ann. §§ 64.2-2006, 2007.
3. Therefore, Ms. Hatch, by counsel, respectfully requests that this Court enter an

Order granting her access to her counsel and recognizing her right to discuss this case with her counsel. Because Petitioners have already interfered with her ability to prepare her Witness and Exhibit Lists, Ms. Hatch also requests that this Court grant her previously-filed Motion for a Continuance.

II. Factual Background

4. On 7 March 2013, Petitioners, by their counsel, sent an email to counsel of record, stating, "Please find attached a copy of the form for use in requesting visitation with Jenny. Please note that this form and attached procedures for requesting and conduct during any visitation with Jenny are based on the Order entered on February 19, 2013." A copy of counsel's email is attached as Exhibit A.
5. A copy of The Form attached to counsel's email is attached as Exhibit B.
6. Page 1 of The Form requires prospective visitors to specify the purpose of their visit and certify "I have read and agreed to the Visitation/Contact Terms and Conditions."
7. Page 2 of The Form sets out the "Term and Conditions" of meeting with Ms. Hatch. The "Terms and Conditions" include the following:
 6. Rules of Conduct. In the best interests of Margaret J. Hatch, all Visitor(s) agree to comply with these rules of conduct. **All Visitor(s) agree to not discuss any aspects of the on-going guardianship case . . . nor suggest any outcomes of the case, with Margaret J. Hatch. . . .**
 7. Agreement to the Terms and Conditions. The Responsible Party must sign both the Visitation/Contact Request Form and sign this Visitation/Contact Terms and Conditions Agreement. Both pages must be signed prior to approval of visitation. The Responsible Party's **signature indicates understanding and compliance with**

these terms and conditions, and that they will act according to the Rules of Contact. . . .

8. Authorization. **The temporary guardian, at their discretion, will authorize or disapprove the request based on . . . demonstrated or anticipated compliance with these terms and conditions.**
(emphasis added).

8. Accordingly, based on the express "Terms and Conditions" of The Form, visitors to Ms. Hatch may not discuss this case with her. If Petitioners believe that visitors will discuss this case with Ms. Hatch, they may or will deny access to her.
9. Subsequently, counsel for Ms. Hatch engaged in a series of emails with counsel for Petitioners to determine if Petitioners intend for The Form to apply to visits between Ms. Hatch and her counsel.
10. On 7 March, Ms. Hatch's counsel asked "If Mr. Brown and/or I want to meet with Ms. Hatch, do we need to submit a visitation request form?"
11. When counsel for Petitioners did not respond, counsel for Ms. Hatch sent a follow-up email on 12 March asking "Would you please let me know if I have to submit a request to meet with my client?"
12. On 12 March, counsel for Petitioners responded: "Sorry but I did not receive your first inquiry dated March 7, 2013 . . . Please find attached a .pdf of the required visit request form."
13. A copy of the 7 and 12 March emails is attached as Exhibit C.
14. On 12 March, Ms. Hatch's counsel sent another email to counsel for the Petitioners asking, "Just so I am 100% sure what you mean, when you say that the form is "required," are you saying that I am required to submit it before I can see

Ms. Hatch?"

15. On 13 March, Counsel for Petitioner responded

All individuals that desire to meet with the respondent are required to complete the visitation form and submit to the temporary guardians. This has been the policy applied since last August by JFS and is continued by the newly appointed temporary guardians. Mr. Brown is well aware of this policy and I am sure can explain its application.

16. A copy of the 12-13 March emails is attached as Exhibit D.
17. Hence, Petitioners have confirmed that The Form, including its prohibition on discussing this case with Ms. Hatch, applies to visits between Ms. Hatch and her counsel.
18. Ms. Hatch's counsel affirmatively state that they were never required by Jewish Family Services ("JFS") to fill out a "Visitation/Contact Request Form" or any other form prior to meeting with Ms. Hatch. Counsel also state that they have never before been asked to and have never agreed to refrain from discussing this case as a condition of meeting with their client.

III. Argument

A. Petitioners are Improperly Interfering with Ms. Hatch's Ability to Prepare for and Defend Herself at Trial

19. As shown, above, Petitioners, through their counsel, are denying Ms. Hatch access to her counsel unless counsel agree not to discuss this case with her.
20. Ms. Hatch has been and will continue to be harmed by Petitioners' refusal to allow her to meet with her counsel and discuss this case. Specifically, Ms. Hatch will be unable to prepare for trial or present an effective defense.
21. For example, Witness and Exhibit Lists are currently due on or about 27 March.

Counsel intended to meet with Ms. Hatch prior to filing these Lists to receive her input, including whether she knows of any witnesses or exhibits that can support her position that she does not need a guardian.

22. Counsel also intended to meet with Ms. Hatch to discuss trial strategy, including whether or not she still wishes to testify and, if so, to help her prepare for direct and cross-examination.
 23. Counsel also intended to meet with Ms. Hatch to discuss the other parties' witnesses and exhibits in order to prepare to present evidence, testimony and argument to counter them.
 24. Counsel also intended to meet with Ms. Hatch to discuss and explain possible outcomes to this case.
 25. Consequently, by refusing to grant Ms. Hatch access to her counsel unless counsel agree not to discuss this case with her, Petitioners' have interfered and continue to interfere with Ms. Hatch's right to present evidence, testimony and argument in support of her defense. See, Va. Code Ann. § 64.2-2007(A).
 26. Therefore, in addition to filing this Motion requesting access to counsel, Ms. Hatch also submits it as a Supplement to her Motion for a Continuance. Due to Petitioner forbidding her from discussing this case with her counsel, Ms. Hatch is unable to submit complete Witness and Exhibit Lists by the deadline set by the Court and will not be able to prepare for and present an effective defense at trial.
- B. Petitioners are Improperly Interfering with Ms. Hatch's Right to Counsel.
27. Similarly, by refusing to grant Ms. Hatch access to her counsel unless counsel

agree not to discuss this case with her, Petitioners have interfered and continue to interfere with Ms. Hatch's right to counsel, guaranteed by Va. Code Ann. § 64.2-2006.

28. The Virginia State Bar's Rules of Professional Conduct describe the role of counsel as follows:

A lawyer may perform various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. Rules of Professional Conduct, Preamble. Available at <http://www.vsb.org/pro-guidelines/index.php/rules/preamble/>.

29. Unless counsel can meet with Ms. Hatch and discuss this case with her, they cannot fulfill any of these functions. As a result, Ms. Hatch will receive substandard representation, and may lose rights she would otherwise have retained.
30. Ms. Hatch respectfully states that if, as counsel for Petitioners insists, the Court gave Petitioners the right to set conditions on who Ms. Hatch can see and what she can discuss, it did not intend to limit her right to counsel or her right to present an effective defense.

WHEREFORE, your Respondent, by counsel, respectfully requests that this Court:

- (1) Enter an Order granting Ms. Hatch access to her counsel, without preconditions;
- (2) Enter an Order recognizing Ms. Hatch's right to discuss this case with her counsel;
- (3) Grant her Motion for a Continuance; and

(4) Grant her such other and further relief that to this Court seems just and proper.

Dated: 19 March 2013

Respectfully Submitted,

MARGARET J. HATCH

By Counsel

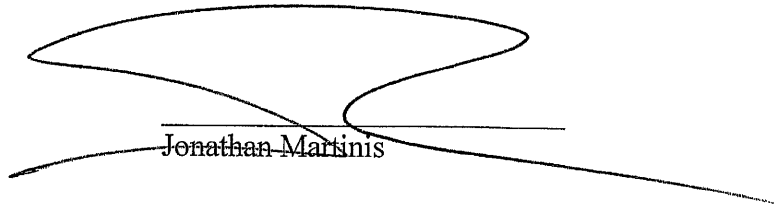


Jonathan G. Martinis, Legal Director
Quality Trust for Individuals with Disabilities
VSB # 37299
Co-Counsel for Respondent
5335 Wisconsin Avenue, Suite 825
Washington, DC 20015
Tel: (202) 448-1450
Fax: (202) 448-1451
JMartinis@DCQualityTrust.Org

CERTIFICATE OF SERVICE

I, Jonathan Martinis hereby certify that a true and accurate copy of the foregoing was hand-delivered, on 19 March 2013, to Harold Barton, Esquire, Counsel for Petitioners, Clara P. Swanson, Esquire, Guardian *ad Litem*, and Martha D. Franklin, Esquire, Counsel for Intervenors.

I also certify that a true and accurate copy of the foregoing was sent, by first class mail and electronic mail to Patrick D. McDermott, McDermott and Ward, 2205 Executive Drive, Hampton, VA 23666



Jonathan Martinis

EXHIBIT A

Jonathan Martinis

From: Martha Franklin <m.d.franklin@cox.net>
Sent: Thursday, March 07, 2013 12:52 PM
To: Jonathan Martinis
Subject: Fwd: Visitation Request
Attachments: Visitation Request Form A.03.pdf

--

Martha D. Franklin, Esq.
VSB #19519
Law Office of Martha D. Franklin, PC
413 Vanderbilt Avenue
Virginia Beach, Virginia 23451
757-477-0978
757-422-8281 (fax)
m.d.franklin@cox.net

> From: "Bart Barton" <hbarton@tmglaw.com>
> To: "'Lawyer'" <lawyer@cswanson.hrcoxmail.com>, "'rmb'" <rmb@villagelawyers.com>, "'Martha Franklin'" <m.d.franklin@cox.net>
> Cc: "'Mary Allen'" <mary@tannerclosings.com>
> Subject: Visitation Request
> Date: Thu, 07 Mar 2013 11:59:13 -0500
>
> Clara, Buster, Martha,
>
>
>
> Please find attached a copy of the form for use in requesting
> visitation with Jenny. Please note that this form and the attached
> procedures for requesting and conduct during any visitation with Jenny
> are based on the Order entered on February 19, 2013. The Temporary
> Guardians have set up an email address for receipt of any request for
> visitation. Please forward your questions on subject to me.
>
>
>
> Thanks, Bart
>
>
>
> Harold H. Barton, Jr., Esq.
> MULKEY, REID & BARTON, PLC
> Attorneys and Counselors at Law
> 688 J. Clyde Morris Blvd.
> Newport News, VA 23601
> Telephone: (757) 595-9500
> Fax: (757) 223-9796

EXHIBIT B

Visitation/Contact Request Form

Visitation/contact for: Margaret J. Hatch
P. O. Box 6161
Newport News, VA 23606
mjhrps@verizon.net

Description of Visit or Contact

Type of visit/contact: On-site visit Pick-up for off-site visit

Date of visit/contact: _____

Beginning time: _____ Projected end time: _____

Location(s): _____

Purpose/additional information: _____

Requestor

Responsible Party: _____

Phone (cell): _____ Email: _____

Additional Visitors: _____
(ALL additional individuals must be listed and must present ID at time of visit)

I have read and agreed to the Visitation/Contact Terms and Conditions. Both pages must be signed.

Signature of Responsible Party Date Submitted

Authorization

Special Instructions: _____

Signature of Guardian Date Approved

Complete and sign both sides. Email completed form to mjhrps@verizon.net or mail to address shown above.

Visitation/Contact Terms and Conditions Agreement

NOTE: Per court order dated February 19, 2013, the temporary guardians may restrict visitation and direct contact with Margaret J. Hatch. All individuals or groups of individuals must agree to the following terms and conditions prior to visitation or direct contact being granted. Failure to comply may result in early termination of an approved visit or in disapproval of future visitation requests.

- Definitions of terms.** The term "Visitor(s)" refers any individual or groups of individuals requesting either an on-site visit at Eggleston Services or pick-up for an off-site visit. "Visitation or direct contact" refers to any connection, interaction, physical contact, contact by telephone or social media, or other communication between the Visitor(s) and Margaret J. Hatch. "Responsible Party" refers to the individual, or the primary individual within a group of individuals, who is responsible for compliance with these terms and conditions. "Additional Visitors" refers to any visitors, in addition to the Responsible Party, who may be visiting or have direct contact with Margaret J. Hatch during a scheduled or unscheduled visit.
- Request for visitation or direct contact.** All Visitor(s) must submit, in writing, a Visitation/Contact Request Form and obtain approval, in writing, from the temporary guardian prior to visitation or direct contact with Margaret J. Hatch. Gifts, food items, letters, and packages must be delivered through Eggleston Services or the temporary guardian. To allow sufficient time for the request to be processed, coordinated with Eggleston Services, and approved, **48 hour advance notice is requested**; requests on shorter notice may not be processed in sufficient time to grant the request.
- Identification of visitors.** All individuals or group of individuals requesting a visitation or direct contact must be identified on the Visitation/Contact Request Form, including both a Responsible Party and any Additional Visitors. Visitor(s) must present a valid government-issued photo ID, which may be photocopied and retained for future visits, and must also identify contact information (cell phone, email address) if the visitor needs to be contacted for any reason.
- Identification of location of visit.** For off-site visits, the Responsible Party must identify any and all locations of the visit or direct contact, as specifically as possible, on the Visitation/Contact Request Form. The temporary guardian may, at their discretion, require visits to be held on-site and supervised by the temporary guardian and/or Eggleston Services.
- Identification of purpose of visit.** The Responsible Party must identify any and all purposes of the visit on the Visitation/Contact Request form as specifically as possible.
- Rules of Conduct.** In the best interests of Margaret J. Hatch, all Visitor(s) agree to comply with these rules of conduct. All Visitor(s) agree to not discuss any aspects of the on-going guardianship case, nor suggest any outcomes of the case, with Margaret J. Hatch. All Visitor(s) agree to not publicly disclose or discuss, directly or through others, any aspect of the case or the visit with Margaret J. Hatch with any television, radio, news, commentary, political, social media, or other public communication. This includes disclosures and discussions prior to, during, and after any visitation or direct contact with Margaret J. Hatch. Extended or inappropriate physical contact is not permitted.
- Agreement to the Terms and Conditions.** The Responsible Party must sign both the Visitation/Contact Request Form and sign this Visitation/Contact Terms and Conditions Agreement. **Both pages must be signed prior to approval of visitation.** The Responsible Party's signature indicates understanding and compliance with these terms and conditions, and that they will act according to the Rules of Contact in the best interests of Margaret J. Hatch as stated above. The Responsible Party must ensure that any Additional Visitors comply with the terms and conditions stated in this document.
- Authorization.** The temporary guardian, at their discretion, will authorize or disapprove the request based on the availability of Margaret J. Hatch; on the availability of Eggleston Services staff or the temporary guardians for transportation and/or supervision; and on demonstrated or anticipated compliance with these terms and conditions. If any Special Instructions or restrictions are identified by the guardians, these must be agreed to prior to the visitation or direct contact.
- Noncompliance.** Noncompliance with or violation of these terms and conditions, either by the Responsible Party or by any Additional Visitors, or interactions resulting in Margaret J. Hatch becoming upset or highly emotional, may result in early termination of an approved visit or in disapproval of future visitation requests.

I have read and agreed to these Visitation/Contact Terms and Conditions

Signature of Responsible Party

Date Submitted

EXHIBIT C

Jonathan Martinis

From: Bart Barton <hbarton@tmglaw.com>
Sent: Tuesday, March 12, 2013 5:50 PM
To: Jonathan Martinis
Subject: Ross and Ross v. Hatch
Attachments: Visitation Request.htm; Visitation Request Form A.03.pdf

Mr. Martinis,

Sorry but I did not receive your first inquiry dated March 7/2013 5:23 PM.
The attached email was forwarded to Robert Brown on that same day.

Please find attached a .pdf of the required visit request form.

Harold H. Barton, Jr., Esq.
MULKEY, REID & BARTON, PLC
Attorneys and Counselors at Law
688 J. Clyde Morris Blvd.
Newport News, VA 23601
Telephone: (757) 595-9500
Fax: (757) 223-9796
www.mrbllaw.org

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-----Original Message-----

From: Jonathan Martinis [<mailto:jmartinis@dcqualitytrust.org>]
Sent: Tuesday, March 12, 2013 10:43 AM
To: Bart Barton (hbarton@tmglaw.com)
Subject: FW: Ross and Ross v. Hatch

Mr. Barton, I have not received a response to my question. Would you please let me know if I have to submit a request to meet with my client?

Jonathan Martinis

-----Original Message-----

From: Jonathan Martinis
Sent: Thursday, March 07, 2013 5:23 PM
To: Hbarton@tmglaw.com

Subject: Ross and Ross v. Hatch

Mr. Barton,

If Mr. Brown and/or I want to meet with Ms. Hatch, do we need to submit a visitation request form?

Jonathan Martinis

Legal Director

Quality Trust for Individuals with Disabilities

EXHIBIT D

Jonathan Martinis

From: Bart Barton <hbarton@tmglaw.com>
Sent: Wednesday, March 13, 2013 5:41 PM
To: Jonathan Martinis
Cc: 'rmb'
Subject: RE: Ross and Ross v. Hatch

Mr. Martinis,

All individuals that desire to meet with the respondent are required to complete the visitation form and submit to the temporary guardians. This has been the policy applied since last August by JFS and is continued by the newly appointed temporary guardians. Mr. Brown is well aware of this policy and I am sure can explain its application.

Harold H. Barton, Jr., Esq.
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From: Jonathan Martinis [<mailto:jmartinis@dcqualitytrust.org>]
Sent: Tuesday, March 12, 2013 7:13 PM
To: Bart Barton
Subject: RE: Ross and Ross v. Hatch

Thank you for your email, Mr. Barton.

Just so I am 100% sure what you mean, when you say that the form is "required," are you saying that I am required to submit it before I can see Ms. Hatch?

Jonathan Martinis

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[hbarton@tmglaw.com]
Sent: Tuesday, March 12, 2013 5:50 PM
To: Jonathan Martinis

Subject: Ross and Ross v. Hatch

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Newport News, VA 23601
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Subject: FW: Ross and Ross v. Hatch

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Jonathan Martinis
Legal Director

