

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, PROBATE DIVISION**

**IN RE: THE ESTATE OF:**

**Mary Sykes**

**A Disabled Adult**

)  
)  
)  
)  
)

**No. 2009 P 4585**

**OBJECTION TO MOTION TO SUBSTITUTE JUDGE FOR CAUSE**

Carolyn Toerpe, guardian of the person and estate of Mary Sykes, a disabled adult, hereby files her objection to the Motion for Substitution of Judge for Cause filed by Gloria Sykes, the daughter of Mary Sykes.

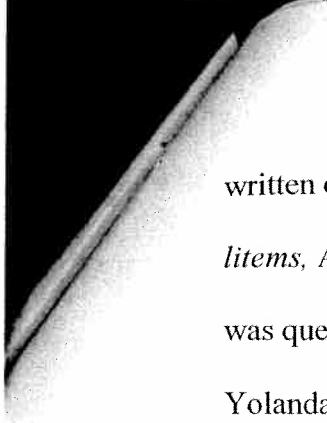
In support of this Motion, Carolyn Toerpe states as follows:

**Background:**

1. Carolyn Toerpe ("Carolyn") is the daughter of Mary Sykes ("Mary") and the sister of Gloria Sykes ("Gloria"). In June of 2009 Carolyn petitioned to have Mary adjudicated as a disabled adult and requested that she be named the guardian of the person and estate for Mary. Carolyn lives in Naperville, IL with her husband Fred Toerpe ("Fred") and Mary currently resides with Carolyn and Fred in Naperville.

2. Gloria filed a cross petition in which she asked for the appointment of the Cook County Public Guardian as the guardian for her mother. Thereafter, on November 18, 2009, the date for the respective parties to submit their care plans, Gloria filed an amended cross petition in which she asked to be named the guardian of Mary's person and that a niece, Kathleen Bakken ("Kathleen") be named as guardian of Mary's estate

3. Following the hearing, Judge Maureen Connors, the judge presiding over the guardianship of Mary Sykes, entered an order rejecting Gloria's care plan. On December 7, 2009 a hearing was then commenced before Judge Connors on the proposed



written care plan of Carolyn Toerpe. Also, present were two court appointed guardian *ad litem*, Adam Stern and Cynthia Farenga. At the December 7<sup>th</sup> hearing, Carolyn Toerpe was questioned by Gloria Sykes regarding her care plan and the court also heard from Yolanda Bakken, Mary Sykes' sister and Kathy Bakken, Mary's niece. Following the hearing, the matter was continued to December 10, 2009, when the order appointing Carolyn Toerpe as the guardian of her mother's person and estate was entered.

4. On January 11, 2010, Gloria filed a Motion asking Judge Connors to reconsider its December 10, 2009 Order appointing Carolyn Toerpe as guardian for her mother. Following briefing and a hearing, on February 25, 2010, Judge Connors denied the Motion to Reconsider.

5. Mary Sykes owns real property held in her trust that is located at 6014 North Avondale, Chicago, IL and she owns additional property in joint tenancy with her daughter, Gloria Sykes, located at 6016 N. Avondale, Chicago, IL. Exhibits A and B, Title documents. Carolyn Toerpe is the successor trustee to Mary Sykes' Trust.

6. Mary Sykes has personal property that is located at 6014 N. Avondale as well as in the garage to 6016 N. Avondale. Gloria Sykes is a tenant on the second floor of 6014 N. Avondale and is in possession of the keys to the home and to the garage.

7. Prior to the February 25, 2010 hearing on Gloria's Motion to Reconsider, Carolyn Toerpe requested the keys to 6014 N. Avondale in order to access the property to complete the court required inventory. In an email dated February 19, 2010 to Gloria's counsel Joel Brodsky, Carolyn through her counsel requested "access to the former apartment of Mary" and further requested that Gloria "make the keys available" as Gloria

“has absolutely no authority to refuse access to [Carolyn] who is in charge of the property in her mother’s trust.” Group Exhibit C-1 and 2.

8. After a series of emails from Gloria’s counsel refusing to discuss the matter until February 22, 2010 (Group Exhibit C-3) on Tuesday February 23, 2010 Gloria’s counsel responded to the request for access to 6014 North Avondale by Carolyn by suggesting that the inventory should not be “conducted by [Carolyn] personally” that instead a third party should conduct the inventory and that Gloria would then “tag the property which does not belong to her.” Group Exhibit C-4. The email contained no offer to produce the keys for access to 6014 North Avondale.

9. On February 24, 2010, Carolyn, through her counsel, sent a letter to Gloria’s counsel, informing him that Carolyn “does not need Gloria’s permission to access *her mother’s* prior residence on the first floor of 6014 North Avondale.” The letter also reminded counsel that the home was in Mary’s trust and Carolyn was the trustee and further that Carolyn, as the guardian of her mother’s estate, “has the right and obligation to enter onto the premises to conduct the required inventory.” The letter also proposed that instead of incurring the expense of litigating a number of issues that we attempt to negotiate resolutions. Exhibit D (Portions of letter which may be construed as settlement proposals are redacted).

10. In response to the February 23<sup>rd</sup> letter, counsel for Gloria responded that Carolyn was engaged in “wishful thinking” and that his client, who had filed a sworn Petition for Guardianship of Mary alleging that Mary was disabled, “is convinced beyond a shadow of any doubt that her mother is not incompetent and never was.” Exhibit E (Portions of email which may be construed as settlement proposals are redacted).

At no time did Gloria or her counsel agree to produce the keys so that Carolyn may access 6014 North Avondale.

11. On February 25, 2010, after the Motion to Reconsider was denied, counsel for Carolyn apprised the Court that attempts to acquire the keys to the “white house” [6014 North Avondale] had been “rebuffed.” Tr. p. 36-37. On the record and in open court Gloria Sykes in response to a comment by Carolyn’s counsel that “We need keys” answered “No.” Tr. pp. 39-40.

12. After an oral motion for the keys, Gloria’s counsel confirmed that Gloria would not turn the keys over “to her sister.” Tr. p. 44. Counsel for Gloria was also informed that the issue of the keys had been raised before in open court at the “last court date.” Tr. pp. 50-51. Later Judge Connors on the record stated that she “wants this information [re: the inventory at 6014 North Avondale] so it will be on the court’s motion as well.” An order memorializing the Court’s Order was then entered. Tr. p. 64. The matter was then continued to March 18, 2010 at 2:00 p.m. for hearing on the Emergency Motion for Permanent Visitation.

13. Prior to March 18, 2010, counsel for Carolyn filed a Motion for a Rule to Show Cause why Gloria should not be held in contempt as the keys to 6014 North Avondale had not yet been tendered pursuant to Judge Connors’ February 25, 2010 Order and filed a Motion to Strike the Emergency Motion for visitation due to lack of standing as well.

14. On March 16, 2010, Gloria filed a Motion for Substitution of Judge for Cause. The sole basis for the extraordinary relief is that Judge Connors failed to accord Gloria “due process” because Judge Connors ordered her to turn over the keys first on an

oral motion and then on the Court's own motion and as such Judge Connors "abandoned [her] role as a judge . . . and in fact became a part of the Guardian's legal team." Motion, ¶ 10. The matter has now been transferred for hearing before this Court.

### ARGUMENT

1. **Gloria has no due process rights at stake in this proceeding and as such she lacks standing even to bring the motion.**

15. The sole basis of the Motion for Substitution is that Judge Connors somehow violated Gloria's due process rights when she ordered Gloria to turn over property belonging not to Gloria, but to Mary Sykes. Gloria's due process claim is utterly baseless as it is clear that she has neither a property nor liberty interest in refusing to turn over property belonging to someone else.

16. "It is fundamental that the constitutional guarantees of procedural due process only become operative where there is an actual or threatened injury impairment of 'life, liberty or property . . .procedural due process safeguards are triggered *only* when the property rights have vested." *Estate of Webster*, 214 Ill.App.3d 1014, 1022, 574 N.E.2d 245, 251 (1<sup>st</sup> Dist. 1991) (emphasis supplied; internal citations omitted).

17. The property at issue – the keys to Mary's home – does not belong to Gloria and while Mary is alive, Gloria has absolutely no present interest in the personal or real property owned by Mary in her own name or in her trust. *Estate of Henry*, 396 Ill.App.3d 88, 919 N.E.2d 33, 40 (1<sup>st</sup> Dist. 2009) (While disabled ward is alive legatees have no present property interest that would trigger any due process protections and they have no standing to appeal) *see also Estate of Webster*.

18. As Gloria has no present interest in Mary's property while Mary is alive, Gloria is not entitled to any due process protections with respect to Mary's property and

her baseless and frivolous claim that she was nonetheless entitled to a hearing on her stubborn refusal to turn over Mary's property to her guardian must be rejected.

19. Similarly, Gloria has no due process rights with respect to Mary's person and Mary's well being. In *Struck v. Cook County Public Guardian*, 387 Ill.App.3d 867, 901 N.E.2d 946 (1<sup>st</sup> Dist. 2008) Janie Struck was adjudicated as a disabled adult in 1986. The Cook County Public Guardian was ultimately named as the guardian of Janie's person and estate. Janie's son is James Struck. Due to James Struck's disruptive behaviors, his visitation with his mother was restricted by the guardian. *Struck*, 387 Ill.App.3d at 872, 901 N.E.2d at 950. James Struck then filed an appeal in which, among other matters, he complained of the restrictions with respect to his visitation with his mother and that the restrictions imposed by the guardian should be removed. In its decision denying Struck's contention the Appellate Court held: "[W]e find no authority in the Probate Act providing James [Struck] with standing to assert a right to visit with Janie and to challenge the guardian's decision on this point." *Struck*, 387 Ill.App.3d at 876, 901 N.E.2d at 954.

20. Based on the foregoing, it is clear that Gloria lacks standing to bring the Motion for Substitution as she has no present stake in the guardianship proceedings and no due process rights in the proceeding, let alone the right to seek the removal of Judge Connors and thereby interfere with the duty of Judge Connors to protect Mary from Gloria's dangerous and inappropriate conduct.

**2. Judge Connors is obligated to protect Mary's property and person.**

21. The contention that in acting to protect Mary's interest in *her* property, Judge Connors abandoned her "role as judge" and became "a part of the Guardian's legal

team” fundamentally misapprehends the role of a judge in overseeing a guardianship and exposes the complete lack of merit for the motion and that the motion was brought without a good faith factual or legal basis.

22. In Illinois, “[g]uardianship proceedings are not, strictly speaking, adversarial. The trial court protects the disabled person as its ward, *vigilantly guarding the ward’s property* and viewing the ward as a favored person in the eyes of the law . . . the trial court functions in *a central role* which permits it to oversee and *control all aspects of the management and protection of the incompetent’s estate.*” *Estate of Wellman*, 174 Ill.2d 335, 348, 673 N.E.2d 272, 278 (1996) (emphasis supplied); *Estate of Mank*, 298 Ill.App.3d 821, 826, 699 N.E.2d 1103, 1107 (1<sup>st</sup> Dist. 1998) (guardian only acts as the hand of the court and is at all times subject to court’s direction); *Estate of KEJ*, 382 Ill.App.3d 401, 424, 887 N.E.2d 704, 725 (1<sup>st</sup> Dist. 2008) (trial court “must” protect the incompetent as its own ward)

23. Under Illinois law, it is the *obligation* of Judge Connors to function in “*a central role*” to protect Mary’s property, accordingly the allegation in the current Motion that Judge Connors “became a part of the Guardian’s legal team” instead of providing a basis to remove Judge Connors for cause, in fact precisely defines exactly how Judge Connors is obligated to act to protect Mary and conclusively establishes that there is no basis to remove Judge Connors for cause and that there is no good faith basis to bring the current motion.

**3. Judge Connor’s ruling cannot serve as a basis for a challenge for cause.**

24. The basis to remove Judge Connors does not come from any “extrajudicial” source, but rather from Judge Connors’ order on the record in open court

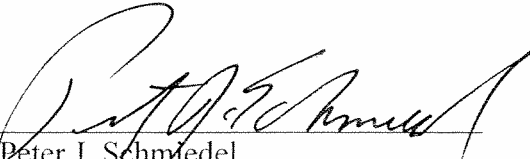
that was made in furtherance of Judge Connors' obligation to protect Mary. Not only does this fact standing alone defeat any basis to remove Judge Connors it is also true that: "judicial rulings alone 'can only in the rarest circumstances evidence the degree of favoritism or antagonism required [to remove a judge] . . . where no extrajudicial source is involved.'" *Eychaner v. Gross*, 202 Ill. 2d 228, 779 N.E.2d 1115 (2002). As Judge Connors is obligated to treat Mary "as a favored person" under the law, it is impossible under these circumstances for Judge Connors' on the record rulings to constitute grounds for removal.

**WHEREFORE**, Carolyn Toerpe, in her capacity as guardian of the estate and person for Mary Sykes, hereby requests that this Court:

- A. Deny the Motion for Substitution for Cause; and
- B. Impose sanctions pursuant to Supreme Court Rule 137 against Gloria Sykes and her attorney, including the payment of fees and costs associated with this motion as there is no good faith factual or legal basis for bringing this motion; and
- C. Grant such further relief as is justified.

Respectfully Submitted,

FISCHEL & KAHN, LTD.

By:   
Peter J. Schmiedel

Peter J. Schmiedel  
Fischel & Kahn, Ltd.  
190 South LaSalle, Suite 2850  
Chicago, IL 60603  
312-726-0440  
Attorney No. 90280