## CAUSE NO. 2017-PC-2912

| IN THE GUARDIANSHIP OF  | § | IN THE PROBATE COURT |
|-------------------------|---|----------------------|
|                         | § |                      |
| CHARLES INNESS THRASH,  | § | NO. 1                |
|                         | § |                      |
| AN INCAPACITATED PERSON | Š | BEXAR COUNTY, TEXAS  |

## ORDER GRANTING MOTION FOR SANCTIONS

On the 10<sup>th</sup> day of April 2019, after proper notice to all parties, a hearing was commenced on the Motion for Sanctions filed on behalf of Tonya M. Barina, Guardian of the Estate of Charles Inness Thrash, and Mary C. Werner, Guardian of the Person of Charles Inness Thrash, against Phillip M. Ross (hereinafter "Ross") and his clients, Laura A. Martinez (hereinafter "Laura"), Brittany A. Martinez (hereinafter "Brittany") and Jose H. Martinez (hereinafter "Joe") (collectively "Respondents"). The hearing was recessed on April 12, 2019 and all parties were given proper notice of the continuation of the hearing to May 8, 2019 on the Motion for Sanctions. The hearing recommenced on May 8, 2019 and continued through May 10, 2019.

THE COURT having conducted a full evidentiary hearing on the Motion for Sanctions, having taken judicial notice of the Motion, Pleadings and all exhibits thereto, all Orders issued by this Court, all admonitions to counsel made in open court, all representations of fact made by counsel in open court, all Court Investigators' Reports and amendments thereto, and all pleadings and motions filed in the Guardianship Proceedings in this cause as authorized by §1055.102 of the Texas Estates Code, and the reporters' records of hearings before this Court, and the Motions, Pleadings, Orders and all exhibits thereto filed in Cause No. 2019-CI-04422, *In the Interest of Brittany Alexandria Martinez, An Adult,* filed in the 150<sup>th</sup> District Court, Bexar County Texas, and Cause No. 2019-CI-04424, *In the Interest of Jose Humberto Martinez, An Adult,* filed in the 224<sup>th</sup> District Court, Bexar County, Texas, and having considered such matters

and the evidence and arguments presented at the hearing and the applicable authorities and finds and orders as follows:

## FINDINGS IN SUPPORT OF SANCTIONS

The Court makes the following findings in support of the sanctions this Court herein imposes and awards:

- 1. The Court's Order on Motion for New Trial and Motion to Reconsider Order, dated January 29, 2019 (the "January Order on Capacity") found Charles Inness Thrash ("Thrash") to be totally incapacitated and without capacity to contract or marry. Ross and Laura were aware of this Order at or about the time of its entry on January 29, 2019. This January Order on Capacity is final and has not been withdrawn or overturned and is still in full force and effect. Ross has sought to overturn the January Order on Capacity by appeal, and that appeal is currently pending in the Fourth Court of Appeals. Thrash's legal capacity, to include his capacity to contract or marry, has not been restored.
- 2. At the time of the entry of the January Order on Capacity, and at all times thereafter in matters material to this cause, Thrash was not lawfully or validly married to Laura by ceremonial marriage or otherwise. At all times material to this cause and to the sanctions imposed herein, Thrash was not lawfully or validly married to Laura by ceremonial marriage or by common law.
- 3. Ross and Laura engaged in a scheme to cause Thrash, a totally incapacitated individual without the capacity to contract or marry, to participate in a marriage ceremony. This scheme involved at least the following: 1) Ross and Laura taking Thrash out of Bexar County, Texas without the knowledge of or consent from the Court or his Guardians, and obtaining a marriage license in Dewitt County, Texas for him marry Laura; 2) Ross and Laura arranging for the marriage ceremony, including arranging a place for the marriage and securing an officiant; 3) Ross and Laura causing Thrash to participate in a marriage ceremony on or about March 4, 2019;

- 4) Laura participating in the marriage ceremony by taking vows; and, 4) Ross participating in the marriage ceremony by serving as best man and by signing the certificate of Holy Matrimony.
- 4. Ross, after having advised Thrash and Laura, and in contravention of the Final Order of Guardianship, demonstrated a lack of candor to the Court by failing to notify this Court of his intention to participate in obtaining a marriage license for Thrash and to cause Thrash to participate in the marriage ceremony referred to in paragraph 3 above without the knowledge of or consent from this Court or Thrash's Guardians.
- 5. As a result of the actions and omissions of Ross and Laura in connection with the attempted wrongful marriage between Thrash and Laura, the Estate of Thrash incurred substantial costs and expenses, including without limitation, attorney's fees incurred in having the marriage set aside and annulled.
- 6. At the time of the January 29, 2019 hearing on January Order on Capacity, the Court informed Ross, and announced in open court with Laura and Brittany in attendance, that Thrash was determined to be incapacitated and that Ross could not be his attorney, as shown on pages 11 and 12 of the January 29, 2019 Reporter's Record. At the time of the February 4, 2019 hearing on Motion for Temporary Restraining Order and Temporary Injunction, the Court again informed Ross, and announced in open court with Laura and Brittany in attendance, that the Court had found Thrash to be without capacity and that Ross could not represent Thrash or be his attorney of record as shown on page 29 of the February 4, 2019 Reporter's Record. At the time of the February 4, 2019 hearing, the Court further reviewed with Ross, with Laura and Brittany in attendance, that Ross did not have standing and that the proper procedure, if they were not satisfied with the January Order on Capacity, was to appeal that Order, as shown on pages 14 through 15 and page 20 of the February 4, 2019 Reporter's Record. At the time of the February 22, 2019 hearing on the Second Motion for Temporary Restraining Order and Temporary

Injunction, the Court informed Ross and announced in open court, with Laura and Brittany in attendance, that Ross lacked standing to represent Thrash's interests and reiterated its earlier determination that Ross could not be Thrash's attorney as shown on pages 16 through 18 and 35 of the February 22, 2019 Reporter's Record. At the time of the March 7, 2019 hearing on the Second Amended Verified Motion for Temporary Restraining Order and Temporary Injunction and Permanent Injunction, the Court informed Ross, and announced in open Court with Laura and Brittany present, that Ross was not and could not be Thrash's attorney of record as shown on page 6 of the March 7, 2019 Reporter's Record. At the time of the March 15, 2019 hearing on the Original Petition for Annulment and for Temporary Relief, the Court explained to Ross, with Laura and Brittany in attendance, that Ross did not have standing to appear on behalf of Thrash, and that the proper procedure if they were not satisfied with the January Order on Capacity, was to appeal that Order or seek to intervene under Estates Code §1055.103 as shown on pages 8 through 10 of the March 15, 2019 Reporter's Record.

- On or about March 5, 2019, Ross signed and filed the Plaintiffs' Original Petitions for Adoption in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424 and signed and submitted for entry, Decrees of Adoption in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424, knowing of the Court's January Order on Capacity, and of the admonishments made in open court regarding Thrash's incapacity and inability to contract. Further, the Plaintiffs' Original Petitions for Adoption falsely represented that Ross is the attorney for Thrash and falsely represented that "(t)here are no Court-ordered relationships affecting the parties or the subject matter of this suit' when in fact there was a court ordered guardianship for Thrash at that time.
- 8. The Plaintiffs' Original Petitions for Adoption in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424 were groundless and brought in bad faith and also were groundless and brought for the purpose of harassment and to interfere with the pending guardianship. Statements

made in Plaintiffs' Original Petitions for Adoption in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424 were groundless and knowingly false. The Plaintiffs' Original Petitions for Adoption in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424 were made and filed for the purpose of harassing the Guardians of the Person and Estate of Thrash and to frustrate and avoid the effect of the January Order on Capacity. The Plaintiffs' Original Petitions for Adoption in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424 were signed and filed in violation of Tex. R. Civ. P. 13 by Ross and at the request of and with full knowledge of Laura, Brittany and Joe.

- 9. The Plaintiffs' Original Petitions for Adoption in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424 were presented for an improper purpose, including to harass, to needlessly increase the cost of the litigation, and to frustrate and avoid the effect of the January Order on Capacity. The Plaintiffs' Original Petitions for Adoption in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424 contained factual contentions which were without evidentiary support and which were not likely to have evidentiary support. The Plaintiffs' Original Petitions for Adoption in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424 were signed and filed in violation of Tex. CIV. PRAC. & REM. CODE ANN. §10.001, by Ross and at the request of and with full knowledge of Laura, Brittany and Joe.
- 10. On March 5, 2019, Ross, Laura, Brittany and Joe appeared before the Honorable David Canales, Judge Presiding, in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424, without the knowledge of or consent from this Court or of Thrash's Guardians, and participated in the proceedings for the adoption of Laura's adult children, Brittany and Joe, by Thrash, with knowledge of the January Order on Capacity and of Thrash's incapacity and inability to contract.
- 11. Ross demonstrated a lack of candor to the Court by failing to notify this Court of his intention to participate in proceedings for the adoption of Brittany and Joe by Thrash without the

knowledge of or consent from this Court or Thrash's Guardians.

- 12. As material to this cause, Ross demonstrated a lack of candor to Judge Canales, and to the Courts in which he served as presiding judge, by failing to notify him of the January Order on Capacity, of the fact that Thrash was adjudged totally incapacitated and without capacity to contract or marry and of the fact that this Court and Thrash's Guardians had no knowledge of and had not consented to the adoptions.
- 13. On April 15, 2019 Ross appeared before the Honorable David Canales, on Plaintiffs' Rule 12 Motions to Show Authority filed in Cause Nos. 2019-CI-04422 and Cause Nos. 2019-CI-04424, and opposed those motions notwithstanding knowledge of the January Order on Capacity and of the admonishments made in open court as set forth in paragraph 6 above.
- 14. As a result of the actions of Ross, Laura, and Brittany in connection with the wrongful adoptions in Cause No. 2019-CI-04422 and Cause No. 2019-CI-04424, the Estate of Charles Thrash incurred substantial costs and expenses, including without limitation, attorney's fees to obtain a new trial, an order vacating the adoptions by Charles Thrash and attorney's fees to establish that Ross was without authority to represent Thrash in Cause Nos. 2019-CI-04422 and Cause Nos. 2019-CI-04424.
- 15. With knowledge that Thrash was found to be totally incapacitated and without capacity to contract or marry, and knowing that Ross could not be hired by Thrash as Thrash's attorney and could not be Thrash's attorney, Ross filed the following pleadings and made the following appearances claiming to be the attorney for Thrash:
  - a. The Notice of Appearance filed January 30, 2019 in Cause No. 2017-CI-2912;
  - Appearance at the February 4, 2019 hearing on Motion for Temporary Restraining
     Order and Temporary Injunction;
  - c. The Affidavit of Philip M. Ross, filed on February 4, 2019, in Cause No. 2017-

- CI-2912;
- d. Appearance at the February 22, 2019 hearing on Second Motion for Temporary Restraining Order and Temporary Injunction;
- e. The Original Petition for Adoption of an Adult, filed in Cause No. 2019-CI-04422;
- f. The Original Petition for Adoption of an Adult, filed in Cause No. 2019-CI-04424.
- 16. Laura and her attorneys Ross, Kevin Kennedy and Carlos Uresti have repeatedly, over an extended period and under a variety of circumstances, represented to this Court that Thrash and Laura are not married, neither ceremonially nor by common law. These representations include the following:
  - a. August 31, 2017, Carlos Uresti identifies Laura to the Court as Thrash's girlfriend. Reporter's Record of the August 31, 2017 hearing, Pg. 7;
  - b. October 25, 2017, Kevin Kennedy identifies Laura to the Court as Thrash's girlfriend of many years and companion and clarified that she has no legal relationship with Thrash. Reporter's Record of the October 25, 2017 hearing Pg. 6 & Pg. 9;
  - c. November 6, 2017, Laura verifies her Application for Appointment of Permanent Guardian of the Person and swears under oath that she is Thrash's girlfriend and that Thrash is not married. Pg. 1, Para. II, Pg.2, Para VI;
  - d. January 17, 2018, Kevin Kennedy identifies Laura to the Court as

    Thrash's long-time girlfriend and clarified that there is no legal
    relationship between Thrash and Laura. Reporter's Record of the January

- 17, 2018 hearing Pg. 4 & Pg. 5;
- e. May 22, 2018, Laura testifies that she is a single person and is not married. Reporter's Record of the May 22, 2018 hearing Pg. 123 & Pg. 124;
- f. February 4, 2019, Ross files a sworn Affidavit in which he represents that that Laura describes Thrash as her boyfriend and in which he describes an informal living relationship between Laura and Thrash living together "as if they were married under Texas common law" Affidavit of Philip M. Ross, filed on or about February 4, 2019, Para. 5;.
- g. February 22, 2019, Ross identifies Laura as Thrash's "life partner" and member of Thrash's "informal family" her children as Charlie's "informal family" and clarifies that Laura is not related to Thrash by marriage and that she no legally protected rights as an informal family member. Reporter's Record of the February 22, 2019 hearing, Pg. 11 & Pg. 12;
- h. April 11, 2019 April 12, 2019, at the hearing on Motion for Sanctions,
   Laura testifies under oath as follows:
  - Q. You identified yourself to the investigator, Andrea Roelofs, as his girlfriend, correct?
  - A. Common law wife, girlfriend. I don't remember what I identified myself as. She called me a paramour, and Judge Rickhoff scolded her.
  - Q. You signed a verified petition in this case in which you denied that you were married to him, isn't that correct?
  - A. That's what it might have signed, yes.
  - Q. And you signed it under oath stating that you were not married to him because that was true, you were not married to him.
  - A. Right
  - Q. He was not your common law husband and you had not been married. That's why you swore under oath that you were not his wife, correct?

- A. Correct. And -
- Q. I just want to make sure we're clear about that.
- A. Okay.
- 17. Ross claimed under oath during his testimony on the Motion for Sanctions that he formed the belief that Thrash and Laura were common law husband and wife when he first met Laura and Thrash in January 2019. He was present during Laura's testimony that she was not Thrash's common law spouse at the hearing on the Motion for Sanctions, yet he did not examine her on the issue of common law marriage, he did not correct her testimony, and he did not at any point during Laura's testimony inform the Court of his alleged determination that Laura and Thrash were common law husband and wife.
- 18. Taking into consideration the demeanor of the witnesses and the totality of the circumstances, this Court finds that Ross and Laura's verification of pleadings and testimony claiming a common law marriage between Thrash and Laura lack credibility and demonstrate a lack of candor with this Court and outright misrepresentations to this Court.
- 19. On May 6, 2019, Ross signed and filed a Verified Motion for Recusal and Supporting Brief in this cause (the "Second Motion for Recusal.") In the Second Recusal Motion, Ross claims that Judge Kazen is a defendant is a case styled Laura A. Martinez-Thrash and Brittany Martinez-Thrash v. the Honorable Oscar J. Kazen, in Cause No 2019-CI-08371 and is a witness in a case styled Laura A. Martinez-Thrash and Brittany Martinez-Thrash v. Tonya M. Barina and Mary C. Warner in Cause No. 5:19-CV-00467. Ross signed the verification attached to the Second Motion for Recusal and Laura and Brittany signed the verifications attached to the Petitions in Cause No 2019-CI-08371 and Cause No. 5:19-CV-00467, which Petitions were attached to and relied upon in the Second Motion for Recusal. The Second Motion for Recusal and the petitions in Cause No 2019-CI-08371 and Cause No. 5:19-CV-00467 falsely represent that Laura is the common law wife of Thrash. These false statements to the Court were material

and were made under oath. Said findings made for the limited purpose of this Court's further findings relating to the Second Motion to Recuse and without comment as to the pending matters in Cause No. 2019-CI-08371 and Cause No. 5:19-CV-00467.

- 20. As indicated by the testimony of Laura at the hearing on the Motion for Sanctions, the petitions in Cause No 2019-CI-08371 and Cause No. 5:19-CV-00467 were filed for the purpose of providing an additional basis for seeking recusal of Judge Kazen and as part of a plan by Ross, Laura and Brittany to seek a more favorable venue and a different judge in hopes of improving their chances of favorable rulings. Said findings made for the limited purpose of this Court's further findings relating to the Second Motion to Recuse and without comment as to the pending matters in Cause No. 2019-CI-08371 and Cause No. 5:19-CV-00467.
- As indicated by the statements of Ross during his summation at the hearing on the Motion for Sanctions, the petitions in Cause No 2019-CI-08371 and Cause No. 5:19-CV-00467, and the Second Motion for Recusal were filed to with the intent to cause this Court to change its previous rulings in this guardianship proceeding. Said finding made for the limited purpose of this Court's further findings relating to the Second Motion to Recuse and without comment as to the pending matters in Cause No. 2019-CI-08371 and Cause no. 5:19-CV-00467.
- 22. The Second Motion to Recuse included 33 identical points of recusal which had been denied by the Honorable Judge Sid Harle. As it happened, the Honorable Judge Sid Harle was reassigned to the Second Motion to Recuse by the Honorable Guy Herman, Presiding Statutory Probate Judge of Texas. The Honorable Judge Sid Harle found "many of the allegations contained in the Second Motion have been previously denied, other complaints of new rulings which cannot be the basis for recusal, absent the Judge voluntarily recusing." Ross demonstrated a Lack of Candor in failing to note in pleadings that these identical points of recusal had been considered and denied, or by the intentional pleading of identical allegations previously

considered and denied, for the purpose re-litigation of matters previously considered and denied before a different jurist.

- 23. The Honorable Judge Sid Harle further noted in his order denying the Second Motion to Recuse that "counsel waited until the day before the hearing to file the Second Motion to Recuse" despite knowing of this Court's assignment some period theretofore. Equally, the First Motion to Recuse was filed at 3:15 p.m., the day before the first setting on the hearing for Injunctive Relief and sanctions. In reviewing the history of Defendants' actions in this cause, and the timing of the two motions for recusal filed by Ross in this cause, the Second Motion for Recusal was filed solely for the purpose of delay to avoid a hearing on the Motion for Sanctions.
- 24. The Second Motion for Recusal was groundless and brought in bad faith, and groundless and brought for the purpose of harassment. Statements made in the Second Motion for Recusal were groundless and knowingly false. The Second Motion for Recusal was made and filed for the purpose of securing a delay in the proceedings in this cause. The Second Motion for Recusal was signed and filed in violation of Tex. R. Civ. P. 13 by Ross and at the request of, and with full knowledge, of Laura and Brittany.
- 25. The Second Motion for Recusal was presented for an improper purpose including to harass, to cause delay, to needlessly increase the cost of the litigation, to frustrate and avoid the effect of the January Order on Capacity and to interfere with the proper administration of the Guardianship of the Person and Estate of Thrash. The Second Motion for Recusal contained factual contentions which were without evidentiary support and which were not likely to have evidentiary support. The Second Motion for Recusal was signed and filed in violation of Tex. CIV. PRAC. & REM. CODE ANN. §10.001, by Ross and at the request of, and with full knowledge of, Laura and Brittany.
- 26. As a result of the actions of Ross, Laura and Brittany, in connection with the wrongful

Second Motion for Recusal, the Estate of Charles Thrash incurred substantial costs and expenses including without limitation, attorney's fees to respond to such motion.

- 27. Ross prepared drafts, or the text of, two letters which purport to be informal requests by Thrash pursuant to Estates Code §1202.054 which Ross caused Thrash to copy in his own handwriting to create the appearance that the letters were written by Thrash, when in fact the letters were written by Ross and do not reflect Thrash's own thoughts, words or intentions. Ross filed the letters in these proceedings on February 1, 2019, as if they were written by Thrash, and as if they reflected Thrash's own words and did not notify the Court that Ross was the author of the letters and that Thrash had merely copied Ross' words. Ross' actions and omissions with respect to these letters demonstrated a lack of candor with this Court, constitute misrepresentations to this Court and amount to interference with transmission of an informal request by Thrash as described in Estates Code §1202.054. The Court has received no further such communications since the ward's removal from Ross' direction.
- 28. Ross, Laura, and Brittany have repeatedly and improperly sought to involve themselves in this guardianship proceeding without first complying with the requirements of Texas Estates Code §1055.003. The Court has repeatedly admonished them that they did not have standing to assert rights on behalf of Thrash or to act as intervenors or interested persons and the Court has repeatedly informed them of the proper procedure under Texas Estates Code §1055.003 and of the necessity for them to comply with such procedure. However, despite such admonishments and information, Ross, with the knowledge and consent of Laura and Brittany, continued filing pleadings in the guardianship proceeding as intervenor or interested persons without complying with the requirements of Texas Estates Code §1055.003, that is without filing a timely motion to intervene that is served on the parties and that states the grounds for intervention in the proceeding and which is accompanied by a pleading that sets out the purpose for which

intervention is sought. As a result of this conduct, it was necessary for Plaintiffs' to file and the Court to grant a Motion to Strike Intervention Pleadings and for the Court to strike the following;

- a. The Notice of Appearance filed by Phil Ross on January 30, 2019, purporting to be THRASH's attorney;
- b. The Notice of Filing Letter to the Court Pursuant to Section 1202.054 filed by Phil Ross on February 1, 2019, purporting to be THRASH's attorney, and purportedly on THRASH's behalf;
- c. The Verified Motion For TRO and Temporary Injunction filed by Phil Ross on February 1, 2019, purporting to be THRASH's attorney, and purportedly on THRASH's behalf;
- d. The Notice of Filing Affidavit (Of Phil Ross dated Feb. 4, 2019) filed by Phil Ross on February4, 2019, purporting to be THRASH's attorney, and purportedly on THRASH's behalf;
- e. The Verified Motion For TRO and Temporary Injunction filed by Phil Ross on February 8, 2019, individually, and as his own attorney;
- f. The Motion to Remove Guardians and to Close and Settle Guardianship made by Brittany, *pro se*, on February 8, 2019;
- g. The Motion to Remove Guardians and to Close and Settle Guardianship made by Laura, pro se, on February 8, 2019;
- h. The Motion to Remove Guardians and to Close and Settle Guardianship filed by Phil Ross on February 8, 2019, individually, and as his own attorney;
- The Second Verified Motion for TRO and Temporary Injunction filed by Phil Ross on February 19, 2019 as attorney for and on behalf of Laura and

- Brittany;
- j. The First Amended Motion to Remove Guardians and to Close and Settle Guardianship filed by Phil Ross on February 22, 2019 as attorney for and on behalf of Laura and Brittany;
- k. The Objection to Order Denying Motion For TRO Order and Temporary
   Injunction and Request for Reconsideration filed by Phil Ross on February
   25, 2019 as attorney for and on behalf of Laura and Brittany;
- The Second Amended Verified Motion to Remove Guardians filed by Phil
  Ross on March 5, 2019 as attorney for and on behalf of Laura and
  Brittany;
- m. The Affidavit of Laura A. Martinez in support of the Second Amended
   Motion to Remove Guardians dated March 4, 2019;
- n. The Second Amended Verified Motion for TRO, Temporary Injunction, and Permanent Injunction filed by Phil Ross on March 7, 2019 as attorney for and on behalf of Laura and Brittany;
- o. The Application for an Order for Spousal Support filed by Phil Ross on March 8, 2019 as attorney for and on behalf of Laura;
- p. The Third Amended Verified Motion to Remove Guardians filed by Phil Ross on March 11, 2019 as attorney for and on behalf of Laura and Brittany;
- q. The Verified Objection/Rebuttal to Report of Court Investigator filed by Phil Ross on March 16, 2019 as attorney for and on behalf of Laura and Brittany;
- r. The Supplement to Objection and Rebuttal to the Report of the Court

- Investigator filed by Phil Ross on March 21, 2019 as attorney for and on behalf of Laura and Brittany; and
- s. The Motion for Independent Mental Examination and Appointment of Attorney Ad Litem filed by Phil Ross on March 22, 2019 as attorney for and on behalf of Laura and Brittany.
- 29. The pleadings listed in Paragraph 30 a s above (the "Stricken Pleadings") were groundless and brought in bad faith, and groundless and brought for the purpose of harassment. Statements made in the Stricken Pleadings were groundless and knowingly false. The Stricken Pleadings were made and filed for the purpose of securing a delay in the proceedings in this cause, to harass the Guardians of the Person and Estate of Thrash and to frustrate and avoid the effect of the January Order on Capacity. The Stricken Pleadings were signed and filed in violation of Tex. R. Civ. P. 13 with full knowledge by and consent of Ross, Laura and Brittany.
- 30. The Stricken Pleadings were presented for an improper purpose including to harass, to cause delay, to needlessly increase the cost of the litigation, and to frustrate, avoid the effect of the January Order on Capacity and to interfere with the proper administration of the Guardianship of the Person and Estate of Thrash. The Stricken Pleadings were groundless and brought in bad faith, and groundless and brought for the purpose of harassment. The Stricken Pleadings contained factual contentions which were without evidentiary support and which were not likely to have evidentiary support. The Stricken Pleadings were signed and filed by Ross in violation of Tex. CIV. PRAC. & REM. CODE ANN. §10.001, with full knowledge by, and consent of, Laura and Brittany.
- 31. As a result of the actions and omissions of Ross, Laura and Brittany in connection with the Stricken Pleadings, the Estate of Charles Thrash incurred substantial costs and expenses including without limitation, attorney's fees to respond to such motion.

- 32. On March 8, 2019, Ross signed and filed an Application for an Order for Spousal Support. This Application was filed by Ross as attorney for Laura and for her benefit and to the detriment of Thrash, an individual Ross also alleged to represent and an individual Ross admits he was providing legal advice to. Thus in these proceedings, Ross sought to represent and claimed to represent parties with interests adverse to each other. The Application for an Order for Spousal Support falsely asserted that Thrash was Laura's spouse, despite Ross' earlier representation to the Court that there was neither "formal" nor "informal" relationship protected by code or law. Ross knew that there was no common law marriage and the alleged ceremonial marriage was invalid. This action was adverse to and not in Thrash's best interests.
- 33. The Application for an Order for Spousal Support was groundless and brought in bad faith, and groundless and brought for the purpose of harassment. The Application for an Order for Spousal Support was made and filed for the purpose of harassing the Guardians of the Person and Estate of Thrash, to secure Thrash's assets for Laura's personal use, and to frustrate and avoid the effect of the January Order on Capacity. The Application for an Order for Spousal Support was signed and filed in violation of Tex. R. Civ. P. 13 by Ross and at the request of, and with full knowledge of Laura.
- 34. The Application for an Order for Spousal Support was presented for an improper purpose including to harass, to frustrate and avoid the effect of the January Order on Capacity, to interfere with the proper administration of the Guardianship of the Person and Estate of Thrash and to convert assets of the Ward's Estate for Laura's personal use. The Application for an Order for Spousal Support was groundless and brought in bad faith. The Application for an Order for Spousal Support contained factual contentions which were without evidentiary support and which were not likely to have evidentiary support. The Application for an Order for Spousal Support was signed and filed in violation of Tex. CIV. PRAC. & REM. CODE ANN. §10.001, by

Ross and at the request of, and with full knowledge of, Laura.

- On March 14, 2019 the Court signed and entered a Temporary Restraining Order in this cause which restrained Ross, Laura, Brittany, Joe, Michelle C. Martinez ("Michelle") and Mario C. Martinez, Sr. ("Mario") (collectively the "Defendants") from engaging in certain activities and required them to preform certain activities (the "TRO"). The TRO was served on all Respondents as of March 15, 2019. Defendants never sought to dissolve, vacate or modify the TRO and never sought any appellate relief by writ of mandamus or otherwise. Notwithstanding that the TRO was valid and enforceable, Respondents failed and refused to comply with and violated the TRO.
- 36. Ross violated the TRO by various acts and omissions including:
  - a... Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, and interfering with Mary C. Werner, Guardian of the Person of Charles Inness Thrash, in the performance of her duties as Guardian of the Person of Charles Inness Thrash;
  - b. Concealing assets of Charles Inness Thrash or his Estate, including, without limitation, a 2016 Chevrolet Corvette, business records of Thrash and his businesses and Thrash's gold Rolex watch;
  - C Obstructing Tony A. Barina, Guardian of the Estate of Charles Inness

    Thrash, from assessing or taking possession of estate assets, to include a

    2016 Chevrolet Corvette, business records of Thrash and his businesses
    and Thrash's gold Rolex watch;
  - d. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, by refusing to turn over

- Estate assets, or refusing to cooperate with Tonya M. Barina, as Guardian of the Estate of Charles Inness Thrash, in the inventory, preservation, and/or protection of Estate assets;
- e. Coming or remaining within 500 feet of the airplane hangar located at 28120 Boerne Stage Road, Unit 320, Boerne, Texas and the residence at 310 Harvard Oak, Shavano Park, Texas;
- f. Failing to immediately deliver to William E. Leighner, as counsel for TONYA M. BARINA, in her capacity as guardian of the estate of Charles Inness Thrash, an incapacitated person, at his office located at 700 North Saint Mary's Street, Suite 1500, San Antonio all assets or personal property belonging to Charles Inness Thrash or his estate and specifically the 2016 Chevrolet Corvette, business records of Thrash and his businesses and Thrash's gold Rolex watch; and,
- g. Failing to file with the Court and in this cause number a sworn inventory and accounting of all assets or property of Charles Inness Thrash or his estate, which were in his possession at any time on or after June 24, 2016 including a 2016 Chevrolet Corvette, business records of Thrash and his businesses and Thrash's gold Rolex watch;
- 37. Laura violated the TRO by various acts and omissions including:
  - Taking control of or occupying residential property located at or having an address of 310 Harvard Oak, Shavano Park, Texas;
  - b. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, and interfering with Mary C. Werner, in the performance of her duties as Guardian of the

- Person of Charles Inness Thrash;
- c. Concealing assets of Charles Inness Thrash or his Estate, including, without limitation, a 2016 Chevrolet Corvette, business records of Thrash and his businesses, the airplane log books for Thrash's airplanes and Thrash's gold Rolex watch;
- d. Obstructing Tony A. Barina, Guardian of the Estate of Charles Inness Thrash, from assessing or taking possession of estate assets, to include a 2016 Chevrolet Corvette, business records of Thrash and his businesses, the airplane log books for Thrash's airplanes and Thrash's gold Rolex watch;
- e. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, by refusing to turn over Estate assets, or refusing to cooperate with Tonya M. Barina, as Guardian of the Estate of Charles Inness Thrash, in the inventory, preservation, and/or protection of Estate assets;
- f. Coming or remaining within 500 feet of the airplane hangar located at 28120 Boerne Stage Road, Unit 320, Boerne, Texas and the residence at 310 Harvard Oak, Shavano Park, Texas;
- g. Failing to immediately deliver to William E. Leighner, as counsel for TONYA M. BARINA, in her capacity as guardian of the estate of Charles Inness Thrash, an incapacitated person, at his office located at 700 North Saint Mary's Street, Suite 1500, San Antonio all assets or personal property belonging to Charles Inness Thrash or his estate to include a 2016 Chevrolet Corvette, business records of Thrash and his businesses, the

- airplane log books for Thrash's airplanes and Thrash's gold Rolex watch;
- h. Failing to file with the Court and in this cause number a sworn inventory and accounting of all assets or property of Charles Inness Thrash or his estate, which were in her possession at any time on or after June 24, 2016 including a 2016 Chevrolet Corvette, business records of Thrash and his businesses and Thrash's gold Rolex watch;
- 38. Brittany violated the TRO by various acts and omissions including:
  - a. Taking control of or occupying residential property located at or having an address of 310 Harvard Oak, Shavano Park, Texas;
  - Taking control of or occupying commercial property located at 4838 West Avenue, San Antonio, Texas and 28120 Boerne Stage Road, Unit 320, Boerne, Texas;
  - c. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, and interfering with Mary C. Werner, Guardian of the Person of Charles Inness Thrash, in the performance of her duties as Guardian of the Person of Charles Inness Thrash;
  - d. Concealing assets of Charles Inness Thrash or his Estate including,
     without limitation, two bags of jewelry and three guns;
  - e Obstructing Tony A. Barina, Guardian of the Estate of Charles Inness

    Thrash, from assessing or taking possession of estate assets, including,
    without limitation, two bags of jewelry and three guns;
  - f. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, by refusing to turn over

- Estate assets, or refusing to cooperate with Tonya M. Barina, as Guardian of the Estate of Charles Inness Thrash, in the inventory, preservation, and/or protection of Estate assets;
- g. Coming or remaining within 500 feet of the airplane hangar located at 28120 Boerne Stage Road, Unit 320, Boerne, Texas, the Shop located at 4838 West Avenue, San Antonio, Texas and the residence at 310 Harvard Oak, Shavano Park, Texas;
- h. Failing to immediately deliver to William E. Leighner, as counsel for TONYA M. BARINA, in her capacity as guardian of the estate of Charles Inness Thrash, an incapacitated person, at his office located at 700 North Saint Mary's Street, Suite 1500, San Antonio all assets or personal property belonging to Charles Inness Thrash or his estate and specifically two bags of jewelry and three guns;
- i. Failing to file with the Court and in this cause number a sworn inventory and accounting of all assets or property of Charles Inness Thrash or his estate, which were in her possession at any time on or after June 24, 2016 including two bags of jewelry and three guns;
- j. Contacting and communicating with Thrash by concealing a note to
   Thrash in a bag of jewelry intended for delivery to Thrash;
- 39. Michelle violated the TRO by various acts and omissions including:
  - Taking control of or occupying residential property located at or having an address of 310 Harvard Oak, Shavano Park, Texas;
  - b. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, and interfering with

- Mary C. Werner, Guardian of the Person of Charles Inness Thrash, in the performance of her duties as Guardian of the Person of Charles Inness Thrash;
- c. Concealing assets of Charles Inness Thrash or his Estate, including,
   without limitation, sixty dollars raised in Thrash's name through the
   GoFundMe campaign;
- d Obstructing Tony A. Barina, Guardian of the Estate of Charles Inness

  Thrash, from assessing or taking possession of estate assets, to include funds raised in Thrash's name through the GoFundMe campaign;
- e. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, by refusing to turn over Estate assets, or refusing to cooperate with Tonya M. Barina, as Guardian of the Estate of Charles Inness Thrash, in the inventory, preservation, and/or protection of Estate assets;
- f. Coming or remaining within 500 feet of the residence at 310 Harvard Oak, Shavano Park, Texas;
- g. Failing to immediately deliver to William E. Leighner, as counsel for TONYA M. BARINA, in her capacity as guardian of the estate of Charles Inness Thrash, an incapacitated person, at his office located at 700 North Saint Mary's Street, Suite 1500, San Antonio all assets or personal property belonging to Charles Inness Thrash or his estate and specifically the funds raised in Thrash's name through the GoFundMe campaign;
- h. Failing to file with the Court and in this cause number a sworn inventory and accounting of all assets or property of Charles Inness Thrash or his

estate, which were in her possession at any time on or after June 24, 2016 including sixty dollars raised in Thrash's name through the GoFundMe campaign.

- 40. On April 12, 2019 the Court signed and entered a Temporary Injunction Order in this cause which enjoined Defendants from engaging in certain activities and required them to perform certain activities (the "Injunction"). The Defendants were present in Court when the Injunction was granted and signed by the Court. The Injunction was served on all Defendants through their counsel of record on April 12, 2019. Defendants never sought to dissolve, vacate or modify the Injunction and never sought any appellate relief by writ of mandamus or otherwise. Notwithstanding that the Injunction was valid and enforceable, Respondents failed and refused to comply with and violated the Injunction.
- 41. Ross violated the Injunction by various acts and omissions including:
  - a.. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, and interfering with Mary C. Werner, Guardian of the Person of Charles Inness Thrash, in the performance of her duties as Guardian of the Person of Charles Inness Thrash;
  - b. Obstructing Tony A. Barina, Guardian of the Estate of Charles Inness

    Thrash, from assessing or taking possession of estate assets, to include
    business records of Thrash and his businesses and airplane log books for
    Thrash's airplanes;
  - c. Interfering with Tonya M. Barina, in the performance of her duties as
    Guardian of the Estate of Charles Inness Thrash, by refusing to turn over
    Estate assets, or refusing to cooperate with Tonya M. Barina, as Guardian

- of the Estate of Charles Inness Thrash, in the inventory, preservation, and/or protection of Estate assets including business records of Thrash and his businesses and airplane log books for Thrash's airplanes;
- d. Failing to immediately deliver to William E. Leighner, as counsel for TONYA M. BARINA, in her capacity as guardian of the estate of Charles Inness Thrash, an incapacitated person, at his office located at 700 North Saint Mary's Street, Suite 1500, San Antonio all assets or personal property belonging to Charles Inness Thrash or his estate and specifically business records of Thrash and his businesses and the airplane log books for Thrash's airplanes,
- e. Failing to file with the Court and in this cause number a sworn inventory and accounting of all assets or property of Charles Inness Thrash or his estate, which were in his possession at any time on or after June 24, 2016 including a 2016 Chevrolet Corvette, Thrash's gold Rolex watch, business records of Thrash and his businesses and the airplane log books for Thrash's airplanes.
- 42. Laura violated the Injunction by various acts and omissions including:
  - a. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, and interfering with Mary C. Werner, Guardian of the Person of Charles Inness Thrash, in the performance of her duties as Guardian of the Person of Charles Inness Thrash;
  - b. Concealing assets of Charles Inness Thrash or his Estate, including, without limitation business records of Thrash and his businesses and the

- airplane log books for Thrash's airplanes;
- C Obstructing Tony A. Barina, Guardian of the Estate of Charles Inness
  Thrash, from assessing or taking possession of estate assets, to include business records of Thrash and his businesses and the airplane log books for Thrash's airplanes;
- d. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, by refusing to turn over Estate assets, or refusing to cooperate with Tonya M. Barina, as Guardian of the Estate of Charles Inness Thrash, in the inventory, preservation, and/or protection of Estate assets;
- e. Failing to immediately deliver to William E. Leighner, as counsel for TONYA M. BARINA, in her capacity as guardian of the estate of Charles Inness Thrash, an incapacitated person, at his office located at 700 North Saint Mary's Street, Suite 1500, San Antonio all assets or personal property belonging to Charles Inness Thrash or his estate to include a business records of Thrash and his businesses and the airplane log books for Thrash's airplanes;
- f. Failing to file with the Court and in this cause number a sworn inventory and accounting of all assets or property of Charles Inness Thrash or his estate, which were in her possession at any time on or after June 24, 2016 including a 2016 Chevrolet Corvette, business records of Thrash and his businesses, Thrash's gold Rolex watch and airplane log books for Thrash's airplanes.
- 43. Brittany violated the Injunction by various acts and omissions including:

- a. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, and interfering with Mary C. Werner, Guardian of the Person of Charles Inness Thrash, in the performance of her duties as Guardian of the Person of Charles Inness Thrash;
- b. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, by refusing to cooperate with Tonya M. Barina, as Guardian of the Estate of Charles Inness Thrash, in the inventory, preservation, and/or protection of Estate assets;
- c. Failing to file with the court and in this cause number a sworn inventory and accounting of all assets or property of Charles Inness Thrash or his estate, which were in her possession at any time on or after June 24, 2016 including two bags of jewelry and three guns.
- 44. Michelle violated the Injunction by various acts and omissions including:
  - a. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, and interfering with Mary C. Werner, Guardian of the Person of Charles Inness Thrash, in the performance of her duties as Guardian of the Person of Charles Inness Thrash;
  - Concealing assets of Charles Inness Thrash or his Estate, including, without limitation, sixty dollars raised in Thrash's name through the GoFundMe campaign;
  - c Obstructing Tony A. Barina, Guardian of the Estate of Charles Inness

    Thrash, from assessing or taking possession of estate assets, to include

- funds raised in Thrash's name through the GoFundMe campaign;
- d. Interfering with Tonya M. Barina, in the performance of her duties as Guardian of the Estate of Charles Inness Thrash, by refusing to turn over Estate assets, or refusing to cooperate with Tonya M. Barina, as Guardian of the Estate of Charles Inness Thrash, in the inventory, preservation, and/or protection of Estate assets;
- e. Failing to immediately deliver to William E. Leighner, as counsel for TONYA M. BARINA, in her capacity as guardian of the estate of Charles Inness Thrash, an incapacitated person, at his office located at 700 North Saint Mary's Street, Suite 1500, San Antonio all assets or personal property belonging to Charles Inness Thrash or his estate and specifically the funds raised in Thrash's name through the GoFundMe campaign;
- f. Failing to file with the Court and in this cause number a sworn inventory and accounting of all assets or property of Charles Inness Thrash or his estate, which were in her possession at any time on or after June 24, 2016 including sixty dollars raised in Thrash's name through the GoFundMe.
- 45. In an effort to gain control of property owned by Thrash or his Estate, Ross, Laura and Brittany appeared before Justice of the Peace Roberto Vasquez and attempted to assert rights under an alleged lease, and only after being confronted by Plaintiff's counsel, did Ross admit that the document he presented to Judge Vasquez as the lease for the property was actually a document which was "reconstructed from memory." Such action by Ross, Laura and Brittany amounts to a lack of candor with the Justice of the Peace and also a material misrepresentation to the Court.
- 46. As a part of the ongoing pattern of fraudulent conduct and the scheme to frustrate and

avoid the effect of the January Order on Capacity, to interfere with the proper administration of the Guardianship of the Person and Estate of Thrash, to undermine the authority and integrity of this Court, and to interfere with this Court's legitimate exercise of its traditional core functions, Laura Martinez and Phil Ross went to a local office of the Social Security Administration on multiple occasions in an effort to frustrate the Guardian of the Estate of Thrash, as duly appointed representative payee, in collection of Social Security benefits of Thrash and caused the Social Security Administration to redirect the monthly benefits and mail belonging to Charles Thrash or his Estate, which should have been directed to the Guardian of the Estate of Thrash, to Ross at his residence and office at 1006 Holbrook Drive. The Court further finds that correspondence regarding Charles Thrash's Social Security benefits, sent by the Social Security Administration to the Holbrook address at the direction of Ross and Laura, was not turned over to the Guardian of the Estate of Thrash, but was shredded. Further, as shown in Laura's sworn complaint to the Judicial Branch Certification, Laura also falsely claimed to be the "Guardian of the Person" of Thrash, despite her prior replacement in that role by Mary Werner, and thereby supplied false information to the Social Security Administration as a part of this fraudulent conduct and scheme.

47. On April 4, 2019 subpoenas were served upon Ross and upon Laura and Brittany by serving their attorney of record, Ross. The subpoenas required the production of documents and things on April 10, 2019, at the time of the hearing on the Plaintiffs' request for Temporary Injunction. Ross failed to deliver to, or explain the subpoena to, his client Brittany and failed to explain the subpoena to his client Laura. As a consequence, Laura and Brittany attributed their failure to fully comply with the subpoenas to Ross' failure to provide copies or failure to explain. Brittany and Laura failed to fully and properly comply with the subpoenas served on April 4, 2019 and Brittany destroyed documents and information subject to the subpoena.

- 48. On May 7, 2019 a subpoena was served upon Michelle by serving her attorney of record, Ross. The subpoena required production of documents and things on May 8, 2019 at the time of the continuation of the hearing on Plaintiffs' Motion for Sanctions. Michelle failed to fully comply with the subpoena.
- 49. Laura, Brittany and Michelle have provided false testimony, made conflicting sworn statements, given non-responsive answers to direct and proper questions, unpersuasively claimed a lack of memory and have provided misleading and incomplete testimony and have thereby demonstrated that they have a complete disregard for their obligation to be truthful; nor any concern for the sanctity of their oath; that they will testify to whatever facts are necessary for the moment to achieve their purposes; that their sworn testimony is unreliable; that they have no respect for the authority of this Court; and have and will continue to engage in bad-faith abuse of the judicial process thereby interfering with the Court's administration of justice. The conduct displayed in the courtroom by Brittany and Michelle, as well as conduct outside the courtroom to include harassment and verbal abuse of Court staff and the Guardians of the Person and Estate, also indicates to the Court that Michelle and Brittany have a complete lack of respect for the Court and for the judicial system. These acts and omissions of Laura, Brittany and Michelle justify the inference what they will not provide truthful testimony in the future in these proceedings and justify the conclusion that the sanction of prohibiting them from offering any testimony in these proceedings is appropriate.
- 50. By the acts and omissions found herein, Ross, Laura, Brittany and Michelle have participated in a fraud upon this Court, and as material to this cause, upon the courts in Cause Nos. 2019-CI-04422 and Cause Nos. 2019-CI-04424 and upon the Justice of the Peace.
- 51. Respondents designed and carried out a vexatious litigation campaign involving litigation against Thrash and his property, the Guardians, and the Court involving the facts found herein

and involving multiple suits, in multiple forums, all designed to frustrate and avoid the effect of the January Order on Capacity, to interfere with the proper administration of the Guardianship of the Person and Estate of Thrash, to undermine the authority and integrity of this Court, and to interfere with this Court's legitimate exercise of its traditional core functions, to wit deciding issues of fact, deciding questions of law, rendering final orders and enforcing its orders.

- 52. The Respondents have acted in concert with each other, with each having undertaken one or more overt acts as found herein which were undertaken in furtherance of a common plan or scheme to frustrate and avoid the effect of the January Order on Capacity, to interfere with the proper administration of the Guardianship of the Person and Estate of Thrash, to undermine the authority and integrity of this Court, and to interfere with this Court's legitimate exercise of its traditional core functions, to wit deciding issues of fact, deciding questions of law, rendering final orders and enforcing its orders.
- The Respondents' acts and omissions as found herein have had the effect of frustrating and avoiding the effect of the January 29, 2019 Order on Capacity, of interfering with the proper administration of the Guardianship of the Person and Estate of Thrash, of undermining the authority and integrity of this Court, and of interfering with this Court's legitimate exercise of its traditional core functions, to wit deciding issues of fact, deciding questions of law, rendering final orders and enforcing its orders.
- 54. Because the Respondents have acted in concert with each other in furtherance of a common plan or scheme, it is just and proper that sanctions be imposed upon them jointly and severally to the extent ordered herein.
- 55. The conduct of Respondents as found herein was intentional, knowing and outrageous.
- 56. There is a direct relationship between the sanctions ordered herein and the offensive conduct of each of Respondents and of Respondents' collective conduct undertaken in concert

with each other and other in furtherance of a common plan or scheme.

- 57. Respondents' repeated misconduct as found herein supports the inference that their claims and defenses in this cause are without merit.
- 58. The Court has considered the full range of sanctions at its disposal and finds that imposition of the sanctions ordered herein are the only sanctions sufficient to remedy the harm caused by Respondents' acts and omissions, are appropriate to punish Respondents for their improper behavior and sufficient to dissuade Respondents and others similarly situated from engaging in such similar behavior in the future.
- 59. The sanctions ordered herein are not excessive, and are no more severe that necessary.
- 60. The sanctions awarded herein are compensatory or punitive or both as may be noted herein.
- 61. In determining the amount of sanctions ordered herein and in determining whether to award sanctions against a party or their counsel, the Court has considered the relative knowledge, training and experience of the parties and counsel, the nature and extent of each Respondents' acts and omissions and the relative culpability of each party and counsel.
- 62. The sanctions imposed herein are imposed upon the parties for bad faith abuses and the sanctions imposed herein will aid in the exercise of this Court's jurisdiction, in the administration of justice and in the preservation of this Court's independence and integrity.
- As a result of the wrongful actions and omissions of Respondents as found in paragraphs and 4 (Marriage), Plaintiffs have suffered damages in the form of reasonable and necessary attorney's fees in the amount of \$9,118.00 reflected as a cumulative amount of \$4,220.00 to Cavaretta, Katona & Leighner, PLLC, \$1,035.00 to Attorney Karen Andersen and \$3,863.00 to Attorney Barrett Shipp.
- 64. As a result of the wrongful actions and omissions of Respondents as found in paragraph

- 30 (Improper Pleadings Stricken), Plaintiffs have suffered damages in the form of reasonable and necessary attorney's fees in the amount of \$\$15,555.00 reflected as a cumulative amount of \$8,120.00 to Cavaretta, Katona & Leighner, PLLC, \$4,960.00 to Attorney Karen Andersen and \$2,475.00 to Attorney Barrett Shipp.
- As a result of the wrongful actions and omissions of Respondents as found in paragraphs 20, 21, and 22 (Second Recusal), Plaintiffs have suffered damages in the form of reasonable and necessary attorney's fees in the amount of \$5,772.00 reflected as a cumulative amount of \$4,400.00 to Cavaretta, Katona & Leighner, PLLC, \$135.00 to Attorney Karen Andersen and \$1237.00 to Attorney Barrett Shipp.
- Attorney's fees incurred by Plaintiffs in connection with the Motion for Sanctions and the request for temporary restraining order and injunction are inextricably intertwined and can not be separated or segregated. As a result of the wrongful actions and omissions of Respondents as found herein (TRO/Injunction/Motion for Sanctions), Plaintiffs have suffered damages in the form of reasonable and necessary attorney's fees in the amount of \$187,529.00 reflected as the cumulative of \$109,264.00 to Cavaretta, Katona & Leighner, PLLC, \$44,770.00 to Attorney Karen Andersen and \$33,495.00 to Attorney Barrett Shipp, which is in addition, and does not include, the attorney's fees found in paragraphs 63 through 65 above.
- 67. The Court finds that Respondents have acted in bad faith and without just cause in prosecuting and objecting to an application in this guardianship proceeding.
- 68. The Court finds that is has authority to order Ross, Laura and Brittany to pay all or part of the costs of this proceeding pursuant to the Texas Estates Code §1155.151; that the amounts awarded below as compensatory sanctions reflect costs of this proceeding and that Texas Estates Code §1155.151 is further authority for the awards identified below as compensatory sanctions.
- 69. Plaintiffs' Motion for Sanctions should be in all things granted under Texas Rules of

Civil Procedure, Rules 13 and 215, under Texas Civil Practice and Remedies Code Section 10.001, et seq., and under the Court's inherent powers as recognized in common law and in TEX. GOVT. CODE ANN. §21.001. Further, the Court finds that an order for Ross, Laura and Brittany to pay some of the costs of this proceeding as set forth hereinafter is just and should be entered under the authority of Texas Estates Code §1155.151.

70. The Court has the authority to sanction a party or a lawyer based on statute (Civil Practice and Remedies Code Sections 10.002, 10.004, 105.001-105.004), on a rule (Texas Rule of Civil Procedure 13 and 215) or based upon the inherent power of the Court. TEX. GOVT. CODE ANN. §21.001; See Ezeoke v. Tracy, 349 S.W.3d 679, 685 (Tex. App.—Houston [14th Dist] 2011, no pet.); In the Interest of K.A.R.; 171 SW3d 705, 714 (Tex. App. – Houston [14th Dist.) 2005, no pet.); Kutch v. Del Mar Coll, 831 S.W.2d 506, 510 (Tex. App.—Corpus Christi 1992, no writ). For the Court to sanction a party using its inherent power, the conduct complained of must significantly interfere with the Court's legitimate exercise of one of its core functions (e.g. hearing evidence, deciding issues of fact or questions of law, management of its docket and the issuance and enforcement of its orders and judgments.) See Ezeoke 349 S.W.3d at 685; K.A.R., 171 S.W.3d at 715. In assessing sanctions, the trial court is not limited to considering only the specific violation for which sanctions are finally imposed, but it may consider everything that has occurred during the history of the litigation. In Re Christus Hospital, 276 S.W.3d 708, 712 (Tex. App. – Houston [1st Dist.] 2008 (original proceeding). Further, the trial court may consider actions taken by Respondents in other lawsuits and in related appeals. Howell v. Texas Workers Compensation Commission, 143 S.W.3d 416, 447-448 (Tex. App- Austin 2004). The Court's inherent power to sanction is invoked when a party fails to comply with a court order. Basaldua v. Forest Woods Subdivision Prop. Owners Ass'n, Inc., 04-11-00716-CV, 2012 WL 2583911 (Tex. App.—San Antonio July 5, 2012, pet. denied). Even in the absence of an applicable rule or

statute, a court has the inherent authority to sanction parties for bad faith abuses, if it finds that to do so will aid in the exercise of its jurisdiction, in the administration of justice and in the preservation of its independence and integrity. The Court has inherent power to impose a monetary penalty as a sanction. *In Re Bennett*, 960 SW2d 35, 40 (Tex. 1997); *In re Harris*, 05-05-01080-CV, 2005 WL 2212298 (Tex. App.—Dallas Sept. 13, 2005, no pet.). There is no test for the imposition of sanctions which follows a set ratio of sanctions to damages and sanctions may exceed an amount necessary to make an aggrieved party whole. *McCafferty v. McCafferty*, 05-16-00587-CV, 2017 WL 3124470, at \*9 (Tex. App.—Dallas July 24, 2017, no pet.).

IT IS THEREFORE ORDERED that the Court imposes and orders the following sanctions against each of the Respondents:

- 1. Compensatory Sanctions/Attorney's fees against Philip M. Ross, Laura A. Martinez and Brittany A. Martinez, jointly and severally, in the amount of \$187,529.00, to be paid by them to the Guardians of the Person and Estate of Charles Thrash, as noted in paragraphs 66.
- 2. Compensatory Sanctions/Attorney's fees against <u>Philip M. Ross</u>, in the amount of \$30,445.00, to be paid by him to the Guardians of the Person and Estate of Charles Thrash, as noted in paragraphs 63, 64 and 65.
- 3. Punitive sanctions against Philip Ross, in the amount of \$5,000.00, to be paid by him to the Guardians of the Person and Estate of Charles Thrash;
- 4. Punitive sanctions against Laura Martinez, in the amount of \$2,500.00, to be paid by her to the Guardians of the Person and Estate of Charles Thrash;
- 5. Punitive sanctions against Brittany Martinez, in the amount of \$1,500.00, to be paid by her to the Guardians of the Person and Estate of Charles Thrash;
- 6. As a sanction, Laura Martinez and Brittany Martinez shall not be entitled to offer

7. As a sanction, Laura Martinez shall not be entitled to pursue any claim, or offer any evidence to support any claim, that Laura Martinez is or was ever the wife of Charles Thrash, whether by virtue of a ceremonial or common law marriage.

8. The acts and omissions of Laura Martinez and Brittany Martinez, as found herein, justify the presumption that their claims and defenses in this cause lack merit and justify striking their pleadings. As a sanction, the pleadings of Laura and Brittany asserting any affirmative claim or asserting any affirmative defense are stricken.

IT IS FURTHER ORDERED that in the event of an unsuccessful challenge of this Order to the Court of Appeals, Plaintiffs shall have and recover from any of the Respondents joining in such unsuccessful challenge, jointly and severally, the sum of \$30,000.00; and in the event of an unsuccessful challenge of this Order to the Texas Supreme Court, Plaintiffs shall have and recover from any of the Respondents joining in such unsuccessful challenge, jointly and severally, the sum of \$50,000.00.

IT IS FURTHER ORDERED that this Order and the sanctions ordered and awarded herein are severed from the remainder of this cause, shall be separately docketed and shall be a final and appealable order of this Court.

IT IS FURTHER ORDERED that Plaintiffs shall have all writs of execution and other process

necessary for the collection of the amounts awarded herein.

Signed this the 24th day of May, 2019

HONORABLE OSCAR KAZEN

Judge Presiding

MAY 24 2019

LUCY ADAME-CLARK CLERK PROBATE COURT NO. BEXAR COUNTY, TEXAS