

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>GERALD J. LINDSLY</b>	:	<b>CASE NO. C-1-07- cv-588</b>
<b>Plaintiffs</b>	:	<b>Judge Spiegel</b>
<b>vs.</b>	:	<b>MOTION TO DISMISS FOR FAILURE TO COMPLY WITH CIVIL RULE 17(C)(2)</b>
<b>MICHAEL WORLEY</b>	:	
<b>and</b>	:	
<b>WILLY DALID</b>	:	
<b>Defendants</b>	:	

Now comes Michael Worley and Willy Dalid, through Counsel, who move that this case be dismissed because this suit was filed by an incompetent person in violation of Civil Rule 17(c) as demonstrated by the attached memorandum and affidavit of Stephen Kerkhoff.

Respectfully submitted,

JOSEPH T. DETERS  
PROSECUTING ATTORNEY  
HAMILTON COUNTY, OHIO

/s/ Christian J. Schaefer  
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TRIAL ATTORNEYS FOR DEFENDANTS  
WORLEY AND DALID

**MEMORANDUM**

**A. The Facts:**

Plaintiff Lindsly filed his complaint with this Court on July 30, 2007. He previously had been found Not Guilty by Reason of Insanity by the Court of Common Pleas of Hamilton County, Ohio on November 15, 2006. (Affidavit of Stephen Kerkhoff). On May 24, 2007, Plaintiff Lindsly had been found to be Mentally Ill and Ordered to be Committed to the Summit Behavior Health Care Organization by the Court of Common Pleas of Hamilton County, Ohio. (Affidavit of Stephen Kerkhoff). Again on August 20, 2007, Plaintiff Lindsly had been found to be Mentally Ill and Ordered to be Committed to the Summit Behavior Health Care Organization by the Court of Common Pleas of Hamilton County, Ohio. (Affidavit of Stephen Kerkhoff). Thereafter the matter was referred to Probate Court because Plaintiff Lindsly could not be held under the jurisdiction of the Court finding him not guilty by reason of insanity for more than one year as provided in *R.C. 2945.401(J)*.

Both before, during, and after the Complaint was filed in this Court, Plaintiff Lindsly was confined in a treatment facility because of his mental condition.

**B. Memorandum**

Federal Civil Rule 17(c) deals with suits by minors or incompetent persons. When an incompetent person has not had a guardian, committee, conservator or similar fiduciary appointed, the suit is to be brought by the next friend of the incompetent person or a Court appointed guardian ad litem. In this instance, no guardian ad litem was filed to file the suit and the suit was not brought by Plaintiff Lindsly's next friend as required by Federal Civil Rule 17.

The case should, therefore be dismissed as it was brought by a person without the capacity to sue or be sued under the Federal Rules of Civil Procedure.

**C. Conclusion**

This case filed by Plaintiff Lindsly during the time of his court ordered hospitalization should be dismissed.

Respectfully submitted,

JOSEPH T. DETERS  
PROSECUTING ATTORNEY  
HAMILTON COUNTY, OHIO

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DEFENDANTS WORLEY AND DALID

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of December, 2007 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which constitutes service.

*/s/ Christian J. Schaefer*  
Christian J. Schaefer  
Assistant Prosecuting Attorney