

ORIGINAL

FILED

Los Angeles Superior Court

DEC 21 2009

John A. Clarke, Executive Officer/Clerk
by M. ZENAROSA Deputy

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13 Co-Guardians of the Estate and Person

DATE OF HEARING
JAN 22 2010 09 10:00

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BY FAX

12 In re the Guardianship of the Person and
13 Estate of,

14 FRANCIS BEAN COBAIN,

15 a Minor.

Case No. BP 120026

**NOTICE OF MOTION AND MOTION TO
SEAL ALL DOCUMENTS AND TO FILE
ALL FUTURE DOCUMENTS UNDER
SEAL OR, IN THE ALTERNATIVE, TO
FILE PORTIONS OF DOCUMENTS
UNDER SEAL RELATING TO A MINOR
AND ALLEGATIONS OF DOMESTIC
VIOLENCE**

Date:
Time: 10:00 A.M.
Dept: 9
Judge: Reva Goetz, Judge Pro Tem

OFFICER: FRIZIONE LEM/LEFH
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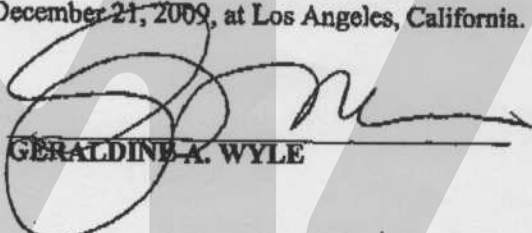
DECLARATION OF GERALDINE A. WYLE

I, Geraldine A. Wyle, declare:

1. I am an attorney licensed to practice law in the State of California and am a partner at the law firm Hoffman, Sabban & Watermaker, counsel of record for Frances bean Cobain, Wendy O'Connor and Kimberly Dawn Cobain, petitioners in the Guardianship proceedings for Frances Bean O'Connor. Except as otherwise stated, the statements contained herein are based on my personal knowledge and experience. If called as a witness, I could and would testify competently to those facts.

2. The confidential information contained in the Petitions for Appointment of (Temporary and Permanent) Guardian and all related documents filed relate to Frances's personal and confidential information, including medical information -- matters as to which Frances has an overriding privacy interest that would be prejudiced unless the documents are filed under seal.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on December 21, 2009, at Los Angeles, California.


GERALDINE A. WYLE

1 TO ALL INTERESTED PARTIES AND TO THEIR RESPECTIVE
2 ATTORNEYS OF RECORD:

3 YOU ARE HEREBY NOTIFIED THAT on _____, at _____
4 in Department 9 of this Court located at 111 North Hill Street, Los Angeles, California 90012,
5 Wendy O'Connor and Kimberly Dawn Cobain, Temporary Co-Guardians of the Person and of
6 the Estate of Frances Bean Cobain, by and through their attorneys of record (the "Guardians"),
7 will move the Court for an Order pursuant to Family Code section 1818 and Cal. R. Court 2.550
8 and 2.551 directing that all documents, information and records in this proceeding be filed under
9 seal, including documents previously filed conditionally under seal and all future documents
10 filed herein or, in the alternative, directing that portions of documents, information and records
11 be filed under seal in furtherance of the public policy behind Family Code section 1818 and to
12 protect the privacy of the minor, Frances Bean Cobain.

13 This Motion is made on the ground that the public policy behind Family Code
14 section 1818, which dictates that all files in conciliation cases be sealed, is equally applicable in
15 this case where the issues and privacy considerations are substantially aligned with those in
16 family conciliation cases.

17 Furthermore, a sealing order is required under Cal. R. Court. 2550(d) because the
18 facts establish:

- 19 1. There exists an overriding interest that overcomes the right of public
20 access to the records;
- 21 2. The overriding interest supports sealing the record;
- 22 3. A substantial probability exists that the overriding interest will be
23 prejudiced if the record is not sealed;
- 24 4. The proposed sealing is as narrowly tailored as possible to protect the
25 privacy rights of a minor; and
- 26 5. No less restrictive means exist to achieve the overriding interest. *Id.*

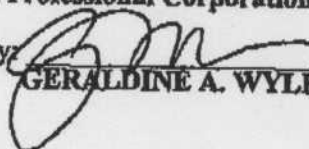
27 This Motion is based on this Motion, the Memorandum of Points and Authorities
28 and the Declaration of Geraldine A. Wyle in support of this Motion, as well as all papers,

1 pleadings and documents on file in this case, and on such oral testimony as may be offered at the
2 time of the hearing on this Motion.

3
4 Dated: December 21, 2009

Respectfully submitted,

5 **HOFFMAN, SABBAN & WATENMAKER**
6 **A Professional Corporation**

7 By: 
8 **GERALDINE A. WYLE**



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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 By this Motion, Wendy O'Connor and Kimberly Dawn Cobain, Temporary
4 Co-Guardians of the Person and of the Estate of Frances Bean Cobain (the "Guardians"),
5 respectfully request that the Court order the sealing of all documents, information and records in
6 this proceeding that have been, to date, conditionally filed under seal and the sealing of all
7 documents filed in the future in this proceeding or, in the alternative, the sealing of portions of
8 documents, information and records revealing facts and circumstances which, as set forth in the
9 documents conditionally filed under seal, led to the filing of the Petitions for Temporary and
10 Permanent Guardianship.

11 The merits of this Motion cannot be fully argued here without disclosing the
12 contents of the documents to be sealed. *Champion v. Superior Court* (1988) 201 Cal.App.3d
13 777, 778; *In re the Marriage of Lechowick* (1988) 65 Cal.App.4th 1406, 1416. Therefore,
14 references will be made to documents filed herein conditionally under seal. Generally, the
15 information to be protected includes the facts establishing the need for guardianship proceedings
16 and the private and medical information relating to the minor.

17
18 **II. BACKGROUND**

19 Wendy O'Connor is the paternal grandmother of Frances Bean O'Connor, a
20 minor ("Frances") and Kimberly Dawn Cobain is the paternal aunt of Frances. Temporary
21 Letters of Guardianship were issued to Wendy O'Connor and Kimberly Dawn Cobain on
22 December 11, 2009 as Temporary Co-Guardians of the Person and of the Estate of Frances Bean
23 Cobain. Corrected Letters of Temporary Guardianship were issued on December 14, 2009
24 (correcting a typographical error). Simultaneously with the issuance of Temporary Letters of
25 Guardianship, a Temporary Restraining Order was issued, on December 11, 2009, restraining the
26 minor's mother, Courtney Love Cobain, from certain behavior and from coming within a certain
27 distance of Frances or her Guardians. A hearing is set for January 5, 2010 on the permanent
28 restraining order, and a hearing is set for February 10, 2009 on the Petition for Appointment of

1 (Permanent) Guardian of the Person and Estate.

2 All documents, records and information filed in this proceeding to date have been
3 filed conditionally under seal. Those documents set forth facts establishing the need for a
4 guardianship, which are private and include medical information concerning Frances.

5
6 **III. LEGAL ARGUMENT**

7 **A. The Court Should Order the Sealing of All Documents Filed Herein to Date,**
8 **and Order All Future Documents Be Filed under Seal.**

9 The issues involved in this case are substantially similar to issues heard and
10 resolved in family conciliation court. (Cal. Fam. Code 1800 *et seq.*) The jurisdiction of the
11 family conciliation court is established in Family Code section 1830.

12 The issues involved in these guardianship proceedings include one or more of the
13 issues enumerated in Family Code section 1830. (See Declaration of Geraldine A. Wyle.) More
14 details cannot be set forth herein, as this Motion is a public document.

15 Family conciliation court files are required to be kept under seal in their entirety.
16 Family Code section 1818 (b) provides, "The files of the family conciliation court shall be
17 closed."

18 The public policy behind the statute requiring all family conciliation court files
19 sealed is obvious, especially when minor children are affected. The suitability of parents to have
20 custody of minor children is determined, and household conditions and the conditions of family
21 members are evaluated to determine how a minor child may be affected, emotionally and
22 physically. Probate courts hearing guardianship proceedings often deal with these substantially
23 related issues, as in this case. Thus, when these issues are prevalent in a guardianship case, the
24 same public policy mandates that the guardianship file be completely sealed. Indeed, if a case
25 with similar facts were heard in family conciliation court, this would be the case, automatically.
26 The public's interest in access to public records is not stronger in a probate guardianship case
27 than in family conciliation court, and a minor's right to privacy is no less important in a probate
28 guardianship case. Therefore, in this case, where the issues being litigated are substantially

1 aligned with family conciliation cases, sealing the entire file is appropriate.

2 **B. California Rules of Court Provide Additional Authority for Sealing the File.**

3 The facts of this case also warrant the sealing of the entire file under the standards
4 set forth in the California Rules of Court. The standards and procedures for obtaining an order
5 sealing documents are set forth in California Rules of Court, Rules 2.550 and 2.551. Under Rule
6 2.550(d), which is based on the standards enumerated by the California Supreme Court in *NBC*
7 *Subsidiary (KNBC-TV) Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999), a court may seal the
8 record "if it expressly finds facts that establish:"

9 (1) There exists an overriding interest that overcomes
10 the right of public access to the record;

11 (2) The overriding interest supports sealing the record;

12 (3) A substantial probability exists that the overriding interest will be
13 prejudiced if the record is not sealed;

14 (4) The proposed sealing is narrowly tailored; and

15 (5) No less restrictive means exist to achieve the overriding interest.
16 *Id.* See Advisory Committee Comment to Cal. R. Court 2.550 ("[c]ourts have
17 found that, under appropriate circumstances, various statutory privileges, trade
18 secrets, and privacy interests, when properly asserted and not waived, may
19 constitute 'overriding interests'").

20 [Emphasis added]

21 All five factors are present here.

22 Frances has an overriding interest in maintaining the confidentiality of and for
23 sealing the Confidential Information to avoid disclosure to the public.

24 **1. The California Constitution guarantees the right to privacy.**

25 Frances has an interest that overcomes the public's right of general access. For
26 that reason, the Guardians seek to seal the allegations made in support of the Petition for
27 Guardianship and in support of the Request for a Temporary Restraining Order, the personal or
28 medical information of Frances that is directly or indirectly revealed or referenced in the
pleadings and other documents filed herein. The fact that guardianship proceedings are pending
is, in itself, revealing of Frances's relationship with her mother, obviously making that
relationship at issue.

1 The California Constitution guarantees Frances a right to privacy. See Cal.
2 Const., Art. I, § 1 ("All people are by nature free and independent and have inalienable rights.
3 Among these are . . . pursuing and obtaining safety, happiness and privacy.").

4 Frances has a right of privacy with respect to her personal and medical
5 information. The California Constitution guarantee's Frances's right to privacy. In addition,
6 California law recognizes that an individual has a privacy right to personal information.

7 In this proceeding, every document reveals details of Frances's relationship with
8 her mother. See the Declarations of Frances Bean Cobain, Wendy O'Connor and Tony
9 Dominguez filed in support of the Petitions for Appointment of Guardians. Details of Frances's
10 personal status are also included.

11 Frances's mother, Courtney Love Cobain, is a public figure whose private life has
12 often been reported in the media. If the details contained in the documents filed herein are open
13 to the public, they will most certainly be published and reported by the media. Indeed, there
14 have already been media reports of these proceedings and public conjecture regarding Ms.
15 Love's fitness as a parent. Frances has an overriding interest in maintaining the confidentiality
16 of her personal information and that of her mother's relationship with her and for those reasons,
17 the Guardians seek to seal all of the documents, records and information in this proceeding as all
18 such documents contain Frances's personal information, including medical information.

19 Unless this Court seals the case file, the information will undoubtedly be widely
20 disseminated, harming Francis by impinging on her right to privacy.

21 **2. The Overriding Interests Support Sealing the Record.**

22 Here, there are "overriding interests" in maintaining the confidentiality of
23 Frances's personal and medical information that overcome the public's general right of public
24 access to the record. See Cal. R. Court 2.550(d)(1).

25 A sealing order is necessary to protect the overriding privacy interests of
26 Frances. See Cal. R. Court 2.550(d)(2). Frances's medical information and the facts set forth in
27 the Declarations of Frances Bean Cobain, Wendy O'Connor and Tony Dominguez would be
28 disseminated to the public. The reporting of these experiences in the media and the intrusive

1 questions and photographing of Frances by the media would cause mental anguish for Frances.
2 These proceeding are designed to improve Frances's life, and the only way to accomplish that is
3 to prevent media attention and dissemination of private information to the public. Furthermore,
4 Frances's safety will be jeopardized if the personal information contained in the Declarations
5 and is disclosed to the public. Sealing the record is the only way to protect Frances.

6

7

3. **There is a Substantial Probability that the Overriding Interests Will be Prejudiced if the Record is Not Sealed.**

8

9 As illustrated above, given the media attention consistently given to Frances's
10 mother, Courtney Love Cobain, dating back to the much-publicized death of Frances's father,
11 Kurt Cobain, Frances's interests will be prejudiced if the record is not sealed in the manner
12 requested. See Cal. R. Court 2.550(d)(2), (3). It is virtually certain that, in the absence of a
13 sealing order, Frances's private and medical information will be disseminated, to her prejudice.

13

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4. **The Proposed Sealing is as Narrowly Tailored as Possible, and No Less Restrictive Means Exist to Achieve the Overriding Interests.**

15

16 The proposed sealing is as narrowly tailored as possible, and no less restrictive
17 means exist to achieve the overriding interest. See Cal. R. Court 2.550(d)(4), (5). All
18 information contained in the documents filed in these proceedings disclose the most confidential
19 information relating to Frances, her personal medical information and information concerning
20 her relationship with her mother. The very fact that a guardianship proceeding is pending while
21 her mother is living is an indication of personal problems in the family. This information is of
22 relatively minimal value to the public, but could be used by third parties to Frances's great
23 disadvantage. Accordingly, Rules 2.550 and 2.551 authorize the filing under seal of all
24 documents, records and information in these proceedings. For the reasons discussed above,
25 Frances's privacy interest in maintaining the confidentiality of her personal information may be
26 protected only by filing all pleadings under seal.

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C. In the Alternative, this Court Should Order the Sealing of Portions of Documents to Protect the Privacy of the Minor.

If the court is not inclined to order the sealing of the entire file in these proceedings, the Court should order sealed all of those portions of documents containing information, facts or allegations relating to the reasons for filing the Guardianship petitions, the personal and medical information relating to Frances. For example, the Declarations of Frances Bean Cobain, Wendy O'Connor and Tony Dominguez contain facts relating to Frances's private life and her medical information, and should be completely sealed. If this court is not inclined to order a complete sealing of the file, the documents and information relating to the issues substantially similar to those issues identified in Family Code section 1830 should be sealed. Should the court find that any portions of the documents in this file may be filed under seal, the Guardians request ten court days to submit the pleadings with proposed redactions.

IV. CONCLUSION

For the foregoing reasons, the Guardians respectfully request this Court to order all documents, reports and information to be filed under seal. In the alternative, the Guardians respectfully request that this Court order all documents relating to Frances's personal and medical information be filed under seal in order to protect Frances, and that the Guardians be granted ten court days to resubmit the pleadings previously filed conditionally under seal with proposed redactions.

Dated: December 21, 2009

Respectfully submitted,

HOFFMAN, SABBAN & WATENMAKER
A Professional Corporation

By: _____

GERALDINE A. WYLE