

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI  
PROBATE DIVISION

IN THE MATTER OF: )  
)  
DAWN DZIUBA, ) Estate No. 16SL-PR02645  
An alleged incapacitated person, )  
)  
Respondent. )

**PETITIONER’S RESPONSE TO RESPONDENT’S ENTRY OF  
APPEARANCE AND MOTION FOR RELEASE ON RECOGNIZANCE**

The Department of Mental Health, by counsel of record, in response to Respondent’s Entry of Appearance and Motion for Release on Recognizance, states as follows:

**FACTUAL BACKGROUND**

On or about July 2, 2014, in the Circuit Court of St. Louis County, an indictment was filed against Dawn Dziuba charging her with making a terroristic threat, a class C felony. The indictment alleges that from May 20-28, 2014, she knowingly communicated to several people threats to cause death and justified killings to particular personnel at Washington University, and she did so with the purpose of frightening 10 or more people. After ordering Ms. Dziuba evaluated by the Department of Mental Health, on March 25, 2016, Judge Dolan entered her Order Finding Defendant Permanently Incompetent to Proceed and Suspending Proceedings to determine if Ms. Dziuba shall be adjudicated

incapacitated and a guardian appointed or involuntarily detained for treatment. On or about August 19, 2016, Petitioner filed a Petition for Appointment of Guardian and Conservator for Ms. Dziuba in this court.

### **MS. DZIUBA'S ENTRY OF APPEARANCE**

Section 475.075.3 RSMO (2000) provides:

3. Upon the filing of a petition under the provisions of subsection 1 of this section or for the approval on behalf of the respondent of a transaction pursuant to section 475.092 or for the rendition of emergency medical treatment under the provisions of section 475.123, the court shall immediately appoint an attorney to represent the respondent in the proceeding. The attorney shall visit his client prior to the hearing. If the client is capable of understanding the matter in question or of contributing to the advancement of the client's interest, the attorney shall obtain from the client all possible aid. If the disability of a client compels the attorney to make decisions for the client, the attorney shall consider all circumstances then prevailing and act with care to safeguard and advance the interests of the client. The court shall allow a reasonable attorney's fee for the services rendered, to be taxed as costs of the proceeding. The court-appointed attorney may be permitted to withdraw if the respondent employs private counsel who enters an appearance on behalf of said person.

Upon the filing of the Petition for Appointment of a Guardian in this case, this court appointed James Huck to represent Ms. Dziuba. Ms. Dziuba has filed an entry of appearance and request to represent herself as first chair in this proceeding with hybrid representation by Mr. Huck. Although Ms. Dziuba claims to be a licensed attorney in the State of Missouri, upon information and belief, her license is on suspended status for failure to pay fees and meet CLE

requirements. In addition, an attempt by an alleged incapacitated person to represent herself in a guardianship proceeding appears contrary to the intent of Section 475.075.3, which requires the appointment of a court appointed attorney or private counsel to represent the respondent.

### REQUEST FOR RELEASE

On March 25, 2016, Judge Dolan entered her Order Finding Defendant Permanently Incompetent to Proceed and Suspending Proceedings to determine if Ms. Dziuba shall be adjudicated incapacitated and a guardian appointed or involuntarily detained for treatment.

Section 552.020.11(6) provides:

**(6) If it is found that the accused lacks mental fitness to proceed and there is no substantial probability that the accused will be mentally fit to proceed in the reasonably foreseeable future, the court shall dismiss the charges without prejudice and the accused shall be discharged, but only if proper proceedings have been filed under chapter 632 or chapter 475, in which case those sections and no others will be applicable.** The probate division of the circuit court shall have concurrent jurisdiction over the accused upon the filing of a proper pleading to determine if the accused shall be involuntarily detained under chapter 632, or to determine if the accused shall be declared incapacitated under chapter 475, and approved for admission by the guardian under section 632.120 or 633.120, to a mental health or developmental disability facility. **When such proceedings are filed, the criminal charges shall be dismissed without prejudice if the court finds that the accused is mentally ill and should be committed or that he is incapacitated and should have a guardian appointed.** The period of limitation on prosecuting any criminal offense shall be tolled during the period that the

accused lacks mental fitness to proceed (emphasis added).

Ms. Dziuba relies on the first sentence of Section 552.011.6 to argue that since she was found permanently incapable of standing trial, and proceedings have been filed under Chapter 475, she should be discharged and released on her own recognizance. Ms. Dziuba fails to recognize that pursuant to Section 552.020.11(6), the criminal charges pending against her should be dismissed, and she should be discharged, only if she is found mentally ill and in need of involuntary commitment or incapacitated and in need of a guardian. It would not make sense to discharge an accused until criminal charges are dismissed, and the statute makes clear that "criminal charges shall be dismissed without prejudice if the court finds that the accused is mentally ill and should be committed or that he is incapacitated and should have a guardian appointed". Petitioner is not aware of any involuntary commitment proceeding involving Ms. Dziuba or of any finding that Ms. Dziuba is incapacitated and in need of a guardian. As felony charges against Ms. Dziuba have not yet been dismissed, and would not be properly dismissed until there is a finding that she is incapacitated and should have a guardian appointed, her motion to be discharged/released from DMH custody on her own recognizance should be denied.

Respectfully submitted,

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Attorney General

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MISSOURI DEPARTMENT OF  
MENTAL HEALTH

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 18<sup>th</sup> day of OCTOBER, 2016, a true and accurate copy of the foregoing was served, via e filing upon the following:

James Huck  
11647 Gravois Road, Suite 100  
St. Louis, MO 63126

and was served via United States mail, postage prepaid, upon the following:

Thomas Arras  
Public Administrator  
105 South Central Avenue  
Room 535  
Clayton, MO 63105

*Chris Koster #61493 for Yvette Hipskind*  
5 Post. Attorney General