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2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 KATSUMI KENASTON )  
5 )  
6 Plaintiff )  
7 )  
8 v. )  
9 STATE OF ALASKA )  
10 )  
11 Defendant )

No. 3AN-04-3485 CI

RECEIVED  
MAR 23 2004  
Law Project For  
Psychiatric Rights

12 **REPLY TO PLAINTIFF'S OPPOSITION TO THE STATE OF ALASKA'S**  
13 **CROSS MOTION FOR SUMMARY JUDGMENT**

14 **Introduction**

15 The question before the court is whether adequate funding and opportunity to  
16 perform are implied material terms of the Settlement. Regardless of what theory is  
17 advanced by the plaintiff – this court should make no such declaration and the State's  
18 cross motion for summary judgment should be granted.

19 **The remedies under the Mental Health Trust Settlement**

20 The plaintiff contends that the State, through its pleadings has admitted that  
21 "specific performance" is available to the plaintiffs.<sup>1</sup> However, the State's position has  
22 not changed, nor has the state made any admissions with respect to the claims raised in

23 <sup>1</sup> In support of this position, the plaintiff quoted a portion of the sentence in the State's  
24 Cross Motion for Summary Judgment. However, to fully understand the State's  
25 position, the sentence should be read in its entirety: "Before a court could order the  
26 Trust Authority, Legislature and Governor to provide additional mental health funding  
for boards (and implicitly remove mental health funding that would otherwise be  
available for programs), a court would first need to scrutinize the activities of the  
boards."

1  
2 this litigation. Section VI.5 of the Settlement Agreement, by its express terms, limits the  
3 available remedy for certain legislative changes to statutory provisions, but otherwise  
4 does not limit any party's right to enforce the agreement or applicable statutes. Thus,  
5 all mechanisms to enforce a contract are available, including specific performance if  
6 the circumstances are appropriate. However, nothing in the Settlement impairs the right  
7 of the State and other beneficiaries of the Mental Health Trust to vigorously oppose any  
8 action that might be brought, regardless of the theory of the case.  
9

10 In this matter, no claim raised in the pending complaint is appropriate for a  
11 declaratory judgement. Further, Plaintiff's newly suggested proposed judgement  
12 strongly suggests that the intended purpose of this pending litigation is to create an  
13 improper litigation short-cut to enable Plaintiff to more easily bring an inappropriate  
14 action for specific performance or an inappropriate Rule 60(b) motion to re-open the  
15 mental health trust class-action litigation.<sup>2</sup>  
16

### 17 The Declaratory Judgment Act

18 The question Plaintiff poses to the court is not proper under the Alaska  
19 Declaratory Judgment Act. Regardless of how you phrase it, whether "adequate  
20 funding and opportunity to be perform" are implied material terms of the Settlement are  
21

22 <sup>2</sup> Any court should be reluctant to alter normal processes to make it easier for  
23 individual beneficiaries to obtain Rule 60(b) relief to re-open class action litigation  
24 similar to the mental health trust litigation. Re-opening such litigation subjects the  
25 entire class to risks associated with the newly continued class action litigation, including  
26 that the litigated result may be less favorable than the Settlement. No individual class  
member should be granted a short cut that subjects the class to these risks. The majority  
of class members who supported settlement in the first place should be given due  
process rights to vigorously oppose attempts by a minority to re-open the litigation.

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2 prefatory questions that requires further factual development in order to provide anyone  
3 with any guidance. A bare declaration that adequate funding and opportunity to  
4 perform are implied material terms is frankly useless. The only way such information is  
5 useful is if there is a development of the concept of what constitutes adequate funding  
6 and opportunity or who should resolve the question.

7  
8 To answer the question that is posed, simply leaves the next questions of what is  
9 adequate funding and opportunity to perform, and who should decide whether adequate  
10 funding and opportunity to perform has been provided. As an example, one can  
11 compare how the Settlement treats funding of the Trust Authority using Plaintiff's basic  
12 argument. Plaintiff argues that because the Boards perform settlement duties, adequate  
13 funding and opportunity to perform must be implied material terms of the Settlement.  
14 In comparison to the Boards, the Trust Authority is a far more important entity under  
15 the Settlement, yet it expressly provides that funding for the Trust Authority is to be  
16 resolved with Legislative oversight under the Executive Budget Act.<sup>3</sup> A declaration  
17 that "adequate funding and opportunity for the Trust Authority to perform" is an  
18 implied material term of the Settlement would merely be misleading by implying that  
19 litigation is an appropriate mechanism to resolve questions regarding adequate funding  
20 of the Trust Authority. Although the Settlement does not expressly address funding for  
21 the less important Boards, as we develop further in the next section of this brief, the  
22 special mental health budget processes created by the Settlement is the apparent  
23 "implied" mechanism under the Settlement to resolve those questions.  
24  
25

26  
<sup>3</sup> See, e.g., Settlement Agreement, Exhibit D at paragraph 9, page 4.

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2 That the question posed will not provide meaningful advice is precisely why the  
3 Alaska Declaratory Judgment Act precludes questions that require further factual  
4 development. The court should not allow the plaintiff to engage in piecemeal litigation,  
5 which is not a good use of time or money for any of the parties to this litigation.

6 **The budget process is where the plaintiff should go to seek redress for her concerns**

7  
8 In addition, the question that the plaintiff is seeking this court to answer is better  
9 addressed through the specific budgetary process that was developed by the Settlement.  
10 The implication from Plaintiff's observation is correct<sup>4</sup> - - a claim for specific  
11 performance related to "adequate funding" of the Boards is a political question that will  
12 almost always be inappropriate for judicial intrusion based upon separation of powers  
13 concerns. Allocating funds between the bureaucratic desires of the Boards and the  
14 needs of other mental health programs is fundamentally a political issue that should be  
15 resolved in the special mental health budget process. This conclusion is particularly  
16 appropriate regarding allocation within the mental health budget, as the mental health  
17 beneficiaries as a constituent group, particularly through their advocate the Trust  
18 Authority, have been given unprecedented influence over the budget process.<sup>5</sup> Beyond  
19 the processes under which the Trust Authority recommends a mental health budget to  
20 the Governor and Legislature,<sup>6</sup> the Trust Authority also controls the expenditure of  
21  
22

23  
24 <sup>4</sup> See Plaintiff's Response at page 2, note 1.

25 <sup>5</sup> See, e.g., Plaintiff's Exhibit A at pages 65-67 (*Weiss* trial court's description of Trust  
26 Authority and special mental health budget process), and Exhibit E (pages from Trust  
Authority's web site at <http://www.mhtrust.org>).

<sup>6</sup> The proposed budget is based, in part, upon recommendations from the Four Boards.

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2 Mental Health Trust funds. Control over the expenditure of trust funds provides the  
3 mental health beneficiaries, through their advocate the Trust Authority, with  
4 considerable negotiating leverage with the legislature, and the ability to supplement  
5 legislative appropriations if necessary.

6 The Settlement, thus, provides the mental health beneficiaries, through the Trust  
7 Authority, with the unprecedented means of a constituent group to heavily influence, if  
8 not control, the level of funding to be allocated to the Boards. Like any other budgetary  
9 decision, that process is necessarily political as any funding allocated to Boards is  
10 funding that may not be allocated towards other mental health program needs. The  
11 special mental health budget process created by the Settlement should resolve any  
12 political disputes regarding the allocation of mental health funding for Boards.  
13

14 Further, assuming *arguendo* that judicial intervention were appropriate, until  
15 there is a budget that has been implemented, there is no way to develop the additional  
16 factual records that would make a judicial declaration of any use to any of the parties to  
17 this litigation. And until there is a budget that has been implemented, it would be  
18 improper for this court to interject itself in the political process under the doctrine of the  
19 separation of power.  
20

21 Accordingly, the State's cross motion for summary judgment should be granted.  
22

### 23 Conclusion

24 To merely declare that adequate funding or opportunity to perform is an implied  
25 material term of the Settlement is not ripe for determination – and absent further factual  
26 development would provide no useful information to any party of this litigation or any

1  
2 looking to a determination on this issue for further guidance. This question is not  
3 proper under the Alaska Declaratory Judgment Act. In addition, the court should not  
4 interject itself into a special and well-defined mental health budget process. The  
5 questions or concerns that are being alleged here should be addressed by the boards  
6 themselves, who may recommend a funding level to the Trust Authority and then to the  
7 Legislature. At a minimum, until that process is complete, the court should not interject  
8 itself in this process under the doctrine of separation of powers.  
9

10 DATED: 22 March 2004

11 GREGG D. RENKES  
12 ATTORNEY GENERAL

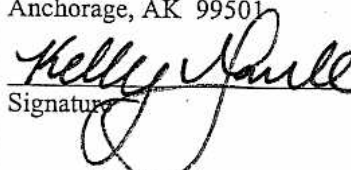
13 By:   
14 for

15 Stacie L. Kraly  
16 Assistant Attorney General  
17 Alaska Bar No. 9406040

18 CERTIFICATION

19 This is to certify that on March \_\_\_\_, 2004, a true  
20 and correct copy of the foregoing document and  
21 proposed Order Granting the State of Alaska Cross  
22 Motion for Summary Judgment was mailed to the  
23 following attorney of record:

24 James Gottstein, Esq.  
25 406 G Street, Suite 206  
26 Anchorage, AK 99501

Signature 

Date 3/22/04