

Subject: Re: Our Pending Litigation

From: Jim Gottstein <jim.gottstein@psychrights.org>

Date: Mon, 09 Feb 2009 12:49:32 -0900

To: "Bakalar, Elizabeth M (LAW)" <libby.bakalar@alaska.gov>

CC: "Kraly, Stacie L (LAW)" <stacie.kraly@alaska.gov>, Jim Gottstein <jim.gottstein@psychrights.org>

Hi Libby,

I, too, hope you are not "one of the 'huge wealthy enemies'" referred to in the Huffington Post article. I'm working on configuring our discovery requests and hope to get at least some of them out by the end of this week or early next. I agree we should obtain "concrete facts and figures derived through formal discovery." Analyzing the Medicaid database seems likely to provide the most global picture. I initially proposed we could meet informally in order to formulate the precise request for the Medicaid database, but you want do even that through formal discovery, which is fine.

In addition to the Medicaid Database I understand the Office of Children's Services (OCS) uses "ORCA" and the Division of Behavioral Health (DBH) uses AKAIMS. I don't know what the Alaska Psychiatric Institute (API) and the Division of Juvenile Justice (DJJ) use. We'll just start through the 30(b)(6) deposition, but I am trying to be careful and thorough about putting it together, which is why it hasn't gone out yet.

How about if we set March 19th to start the 30(b)(6) deposition of the state?

Bakalar, Elizabeth M (LAW) wrote:

We too look forward to working with you, so I truly apologize if it wasn't clear from our January meeting that we were planning to take a hard look at the issues you identified in your agenda. We are doing so as we speak, and just this morning I had a long meeting with DHSS folks to discuss. Settlement (in our opinion) will be helped enormously by concrete facts and figures derived through formal discovery. That way we will have a better idea as to the validity of your allegations, the scope of possible settlement, and the financial impact of any proposals. Our point was simply that there is no need to informally "lobby" the public with respect to issues already being addressed through active litigation. That's our position, but obviously you'll do what you need to do. And no, I was not aware that you were officially scheduled to present at the BTKH meeting. But I sincerely hope that we are not one of the "huge wealthy enemies" referred to in the Huffington Post piece you've attached. We have a common goal of keeping kids in custody safe and healthy. We need to be partners—not combatants—in that endeavor.

We are trying to work with you sincerely and in good faith and our point was simply that it's difficult to do so when you're on the sidelines maligning DHSS.

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From: Jim Gottstein [<mailto:jim.gottstein@psychrights.org>]

Sent: Friday, February 06, 2009 7:16 PM

To: Bakalar, Elizabeth M (LAW)

Cc: Kraly, Stacie L (LAW); Amanda Metivier; Jim Gottstein

Subject: Re: Our Pending Litigation

Hi Libby,

It is very encouraging to hear the State is working on settlement issues. I wasn't encouraged when we left our meeting a month ago and this is the first indication I have heard the State is working on settlement issues. You ask that I consider limiting public advocacy efforts "during the the time we have specifically identified to work on settling the issues you raised." What time have you specifically identified to work on settling the issues I raised?

When I thought about timing, (a) the Legislature is presumably going to adjourn in mid April, and since (b) the trial is set for February 1, 2010, (c) it was hard to see how we could even get there from here, especially since (d) as far as I am aware, there has been no effort by the Administration to even raise the possibility with the Legislature. If, on the other hand, the Administration has been talking to legislators, I certainly don't see how it can complain about me communicating with it as well. If my e-mail to the Legislature caused the Administration to talk to legislators about the issue, from my perspective that seems good.

My e-mail to all of the legislators was really more of a courtesy, and especially so they could not say they hadn't been informed by me, if, as I hope, absent a settlement, we obtain a court order requiring the State to immediately cease the way it is psychiatrically drugging and paying for the psychiatric drugging of children and youth. Unless requested by legislators for more information, I am not intending to contact them further because I believe, without support from the Administration, it would be a waste of my time, which will be better spent on the litigation. However, as I think you know, I am scheduled to make a presentation to the Alaska Mental Health Trust Authority's Bring the Kids Home workgroup meeting Wednesday afternoon. I am doing that because, as we both know, there will need to be resources devoted to solving the problem and the Trust is potentially part of the solution.

As to PsychRights' general public advocacy efforts, we see that as a key part of the effort. In that regard, you might be interested in the item appearing in the influential Huffington Post blog a couple of days ago at http://www.huffingtonpost.com/dr-peter-breggin/a-hero-protects-americas_b_164020.html . I have also (hopefully) attached the February Nine Star Youth Services Newsletter, "The Teen Beat," which has a couple of articles about the issue starting at page 7.

The State should be ashamed of what it is doing to children and youth, should be immediately taking steps to rectify the situation, and I hope hard questions do start being asked of the Administration and Legislature. In my mind, that would encourage settlement.

I look forward to working with you on these issues.

Bakalar, Elizabeth M (LAW) wrote:

Hi Jim,

It's come to our attention that you've recently contacted the Alaska Legislature regarding our pending litigation (3AN-08-10115). Specifically, you e-mailed members of the Legislature on January 27 to inform them of the alleged "incredible amount of harm the State of Alaska is unnecessarily inflicting" on youth in state custody. We also understand that you have sought to participate in at least one public meeting attended and/or sponsored by

DHSS, possibly for the purpose of addressing issues related to this litigation.

We, along with our clients, attended our January 2009 settlement meeting in good faith. As a result of that meeting we have started to work on many of the issues you identified in the hopes that we could either narrow the scope of this lawsuit or frame future settlement proposals. We understand that you will soon be propounding formal discovery requests, which hopefully will go a long way toward advancing these goals.

So we were a bit surprised and confused by your overtures to the Legislature and others to seek public venues in which to discuss this case. Our clients believe that given our pending litigation, these issues are more appropriately resolved through discovery, settlement, and other established judicial processes.

While no one disputes your right to advocate your position to the public, we ask that you consider limiting these efforts during the time we have specifically identified to work on settling the issues you have raised. It is very difficult and distracting for the Department to engage in settlement discussions while having to simultaneously address and respond to your public advocacy efforts.

Thanks.

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