

THOMAS C. HORNE
ARIZONA ATTORNEY GENERAL
Firm Bar No. 14000

Gregory D. Honig, State Bar No. 018804
Kevin D. Ray, State Bar No. 007485
Assistant Attorneys General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Telephone: (602) 542-8328
Fax: (602) 364-0700
E-mail: EducationHealth@azag.gov
Attorneys for Defendants Humble and Nelson, ADHS

Logan T. Johnston, AZ Bar #009484
JOHNSTON LAW OFFICES, P.L.C.
1402 E. Mescal Street
Phoenix, Arizona 85020
Telephone: (602) 452-0615
Facsimile: (602) 716-5997
ljohnston@johnstonlawoffices.net
Attorneys for Defendant Betlach, AHCCCS

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

J.K. a minor by and through R.K., et al.,

Plaintiffs,

v.

WILL HUMBLE, in his official capacity as
interim Director of the Arizona Department of
Health Services; DR. LAURA NELSON, in her
official capacity as Director, Division of
Behavioral Health Services, Arizona
Department of Health Services; THOMAS J.
BETLACH, in his official capacity as Director
of the Arizona Health Care Cost Containment
System,

Defendants

CASE NO. CIV-91-261-TUC-AWT

**DEFENDANTS' MOTION TO
CLARIFY AND RECONSIDER**

1 Defendants respectfully 1) move for clarification of the Court's "Order re:
2 Motions to Terminate the Court's Jurisdiction and for Attorneys' Fees" (Dkt. 561) ("the
3 Order") and 2) ask the Court to reconsider the portion of the Order that requires the
4 parties to stipulate to jurisdiction that the Defendants dispute.
5

6 **I. Motion to Clarify**

7 The Court's February 27, 2012 Order denied Defendants' Motion to Terminate the
8 Court's jurisdiction and ordered the parties to consider the appointment of a special
9 master. The Court also ordered the parties to submit a stipulation "regarding a date until
10 which the Settlement Agreement, and the Court's jurisdiction over the pending dispute,
11 needs to be extended." The Order is ambiguous with respect to the scope of the
12 jurisdiction the Court intends. The Order states, in pertinent part:
13
14

15 In light of the present dispute, Defendants' obligations cannot be said to have
16 terminated and the Court's jurisdiction continues for the purpose of enforcing the
17 Agreement. . . . Given the content of the Court's November 2010 Order,
18 Defendants' participation in mediation after February 1, 2011 constitutes a course
of conduct that waived their right to insist on strict performance of the termination
date in the Agreement.

19 Dkt. 561, p.7. Defendants are concerned that the Order's language could be read to
20 mean the Court is extending jurisdiction over resolution of "the present dispute" or,
21 alternatively, that the Court is doing this *and* extending the entire Agreement. The latter
22 interpretation seems unlikely, since the Court denied Plaintiffs' motion (Dkt. 518)
23 seeking to extend the existence of the Settlement Agreement (Dkt. 530) and since even
24 Plaintiffs' counsel had agreed at the end of the November 22, 2010 hearing before Judge
25 Roll that the Agreement itself, as opposed to any pending dispute that had to be resolved,
26
27
28

1 was about to terminate by its own terms: “Thank you for bringing that up, because by the
2 terms of the agreement, the Court’s jurisdiction expires in February of next year.” Dkt.
3 535, p. 26. The Plaintiffs thereafter made no request to extend the Agreement.
4

5 The Defendants’ motion to terminate the Court’s jurisdiction was directed at
6 terminating the dispute resolution process and recognizing the expiration of the
7 Agreement. The question raised by the language of the Order is whether the Court ruled
8 that it has jurisdiction to resolve the dispute it concluded was still pending or whether the
9 Court intended to go beyond this and keep the Agreement in existence for all purposes,
10 despite its termination provisions.
11

12 Underscoring the ambiguity of the Order, Plaintiffs have now tendered
13 Defendants a proposed stipulation regarding extension of the Court’s jurisdiction. This
14 proposed stipulation suffers from the same ambiguities. Exhibit A hereto. Defendants
15 asked Plaintiffs’ counsel to clarify the nature of the jurisdiction they are proposing in this
16 stipulation, but counsel refused to respond, except to say there is no ambiguity in the
17 Court’s order. Exhibits B and C hereto.
18

19 Obviously there is a difference between extending the Court’s jurisdiction for the
20 purpose of enforcing the dispute resolution provisions and extending the entire
21 Agreement. The Settlement Agreement unambiguously states that the Court’s
22 jurisdiction is limited to disputes that were timely submitted and pending as of July 1,
23 2010. *See* Agreement, Dkt. 397, as amended in 2007, Dkt. 445. That this is so has never
24 been challenged by either side. Even if the Court finds the dispute resolution process
25 must continue because Defendants engaged in one session of unsuccessful mediation
26
27
28

1 after February 1, 2011, the Order does not suggest that this act constituted a waiver of the
2 broader argument that Defendants have vigorously pursued for the last three years that at
3 the very least the provisions of the Agreement other than the dispute resolution process
4 terminated on July 1, 2011.

5
6 The Plaintiffs' unwillingness to discuss this issue and the ambiguity of their
7 proposed stipulation demonstrate the need for clarification. Defendants therefore request
8 the Court to clarify whether it is ordering the parties to stipulate to (1) the extension and
9 continued existence for all purposes of the Settlement Agreement or (2) to an extension
10 of jurisdiction only for the purpose of resolving disputes Plaintiffs properly raised prior to
11 July 1, 2010 pursuant to paragraphs 79 and 80 of the Agreement, as amended in 2007.
12

13
14 **II. Motion to Reconsider**

15 Defendants further request that the Court reconsider the requirement of its Order
16 that the parties stipulate to a jurisdiction that the Defendants dispute. Especially since
17 Defendants' efforts to comply with Judge Roll's November 22, 2010 order (Dkt. 530) by
18 engaging in the mediation that wound up falling after February 1, 2011 has been deemed
19 a waiver, Defendants are concerned that the required stipulation could also be interpreted
20 as a waiver of their right to contest these matters in the future. Defendants therefore
21 respectfully ask the Court to reconsider the requirement for a stipulation and instead enter
22 an order extending jurisdiction on the basis it believes appropriate.
23
24

25 **RESPECTFULLY SUBMITTED** this 12th day of March 2012.

26 THOMAS C. HORNE
27 Attorney General
28

1 By: S/Greg Honig
2 Gregory D. Honig, State Bar No. 018804
3 Kevin D. Ray, State Bar No. 007485
4 Assistant Attorneys General
5 1275 West Washington Street
6 Phoenix, Arizona 85007-2926
7 *Attorneys for Defendants Humble and*
8 *Nelson, ADHS*

9 By: s/Logan Johnston
10 Logan T. Johnston
11 **JOHNSTON LAW OFFICE, PLC**
12 1402 E. Mescal Street
13 Phoenix, AZ 85020
14 *Attorney for Defendant Betlach*
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Logan Johnston, an attorney, hereby certify that on March 12, 2012, I electronically transmitted the foregoing Defendants' Motion to Clarify and Reconsider, using the ECF System for filing and transmittal of a Notice of Electronic filing and to ECF registrants. I further certify that a copy of the foregoing Motion was mailed this March 12, 2012, to the following:

Honorable A. Wallace Tashima
U.S. District Court
405 W. Congress Street
Tucson, AZ 85701

Anne C. Ronan
Arizona Center for Law in the Public Interest
202 E. McDowell Road, Suite 153
Phoenix, AZ 85004

Ira A. Burnim
Alison N. Burkoff
BAZELON CENTER FOR MENTAL HEALTH LAW
1101 Fifteenth Street N.W., Suite 212
Washington, D.C. 20005-5002

Patrick Gardner
NATIONAL CENTER FOR YOUTH LAW
405 14th Street, Suite 1500
Oakland, California 94612-2701

Edward L. Myers III
ARIZONA CENTER FOR DISABILITY LAW
5025 E. Washington Street, Suite 202
Phoenix, AZ 85034
Attorney for Plaintiffs

s/ Logan Johnston

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

J.K. a minor by and through R.K., et al.,

Plaintiffs,

v.

WILL HUMBLE, in his official capacity as
interim Director of the Arizona Department of
Health Services; DR. LAURA NELSON, in her
official capacity as Director, Division of
Behavioral Health Services, Arizona
Department of Health Services; THOMAS J.
BETLACH, in his official capacity as Director
of the Arizona Health Care Cost Containment
System,

Defendants.

CASE NO. 4:09-CV-00558-PHX-JMR

**ORDER GRANTING DEFENDANTS'
MOTION TO CLARIFY AND
RECONSIDER**

Having considered Defendants' Motion to Clarify and Reconsider, **IT IS
HEREBY ORDERED** GRANTING said motion and clarifying its order substituting
Logan T. Johnston of Johnston Law Offices PLC in place of David L. Niederdeppe and
Paul E. Steen of Ryan Rapp Underwood, PLC. as counsel for Defendants.

By: _____
Judge, United States District Court