IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

M.H., on behalf of himself and on behalf of the class of juvenile parolees who face revocation proceedings, Plaintiffs, v. ADAM MONREAL, Chairman of the Illinois Prisoner Review Board; and PAT QUINN, Governor of the State of Illinois, Defendants.	)	Case No. 12CV8523 Judge Andrea R. Wood

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION TO ENFORCE THE CONSENT DECREE

The Plaintiffs have moved this Court for entry of an order requiring that the Defendants comply with the terms of the Consent Decree previously entered in this matter. In their original motion, Plaintiffs sought documents and information concerning 1) the qualifications of the counsel who will appointed to members of the Plaintiffs class; 2) the compensation structure for appointed counsel (including how are counsel paid and for which tasks are they paid); and 3) the procedure(s) for appointing counsel. The Defendants have recently provided documents concerning the third request, so only the first two remain at issue. The plain language of the Decree makes clear that class counsel has a role in monitoring and enforcing its terms. Yet, the Defendants have stymied class counsels' efforts to perform their obligation by refusing to provide even the most basic information about the individuals the Defendants selected to provide legal representation to the Plaintiff class.

The Parties are in agreement that paragraph 34 of the Decree provides that class counsel may request those documents "necessary in order to evaluate the Defendants' substantial compliance with the Consent Decree." What is at issue is whether Plaintiffs' aforementioned requests meet this standard. The Defendants have specifically refused to produce materials relating to the qualifications of appointed counsel and their compensation, and they now oppose Plaintiffs' motion (Doc. No. 81) (hereinafter, Def. Br.), contending that Plaintiffs are engaging in a "fishing expedition" unrelated to the enforcement of the Decree. This assertion misrepresents Plaintiffs' intentions and the role of class counsel in monitoring the implementation of the Decree.

In accordance with the Decree, the requested documents are essential for class counsel to evaluate potential systemic deficiencies that have led to ongoing due process violations. While monitoring hearing observations, class counsel have noted troubling deficiencies in the process, many of which were documented by the Monitor in an initial memorandum provided to all the parties on February 12, 2015. The Monitor was unable to meet with the appointed attorneys or observe hearings during his last visit, and for that reason he could not opine on the systemic deficiencies that animate this request for information. Namely, that some appointed attorneys appear either unable or unwilling to provide representation that protects the due process rights of the youth in the Plaintiff class. Plaintiffs sought the information at issue here, first, in an attempt to investigate and identify any potential systemic deficiencies that allow these due process violations to persist, prior to conferring with the defendants or bringing a formal enforcement action, and second, so that class counsel could be armed with proposed solutions to any identified issues.

It is undisputed that the purpose of the Decree is to ensure that the due process rights of all children in the custody of the Department of Juvenile Justice and facing the revocation of their parole are protected. Information pertaining to the attorneys' qualifications and their compensation are directly relevant to class counsel's inquiry into whether youth are in fact receiving representation adequate to protects these rights. In order to fulfill the mandate of the Decree, attorneys must be more than merely present at each hearing—they must fulfill several specific tasks both prior to and during the revocation hearings, which are necessary to provide meaningful representation. These tasks include: receiving the charges and the evidence against their client in a timely manner; reviewing that evidence with the client; performing whatever investigation is warranted to present a defense; gathering evidence regarding mitigation and disposition should the youth be found to have violated the terms of parole; and advocating on behalf of the youth at the actual revocations hearings to defend against the violation charges, obtain bond pending a final hearing, encourage the youth's prompt placement at a host site outside the DJJ system, and effectuate a fair supervision plan for any youth who is resumed on parole.

The background and qualifications of each of the appointed attorneys, including their experience working with youth in the juvenile justice system, are related to the ability of counsel to fulfill these obligations. Based on class counsels' observations of parole revocation hearings, it is clear that not all of the appointed attorneys are performing the above tasks. One reason for this may be that the attorneys lack sufficient experience in juvenile justice and administrative proceedings; another may be that the attorneys are not adequately compensated, as discussed below. Class counsel have a right

to obtain information from the Defendants to determine why some class members' due process rights continue to be violated, even when the class member is represented by an appointed attorney.

Moreover, experience is a generally accepted metric in determining an attorney's ability to provide adequate representation in the legal field. The Northern District Court, for instance, has established a trial bar, membership in which is required to try a jury case. Membership is not open to any lawyer with a license. Rather, the Court requires that attorneys seeking to join have certain proficiency, including trials in other jurisdictions, second chair experience, etc. Similarly, Plaintiffs' counsel seek information regarding the qualifications of the lawyers being appointed as a part of their investigation into the attorneys' ability to provide adequate representation.

The manner in which attorneys are compensated (and the amount of the compensation), as set forth in the individual attorney contracts,[1] is just as relevant to this inquiry. The Defendants have chosen to meet their constitutional obligations pursuant to this Decree by contracting with private providers. This approach is certainly permissible, however, it means that market forces become relevant to the inquiry into whether the level of representation provided by appointed attorneys meets due process requirements. If the Defendants are paying appointed counsel a flat fee of $20 per hearing, for instance, an entirely different level of representation will result than if the Defendants are paying appointed counsel $200 per hearing.

[1] Class counsel have not received the final state contracts entered into by the attorneys who are representing youth. Rather, they have only obtained access to the solicitation for bids available online. However, the contracts themselves are subject to disclosure under Illinois' FOIA provisions. *See* 5 ILCS 140/2; *Stern v. Wheaton-Warrenville Community Unit School Dist. 200*, 233 Ill.2d 396, 405-406 (2009). As such, they should clearly be made available to class counsel.

The compensation structure matters as well. Defendants contend that all attorneys chose the method by which they sought to be compensated, *see* Def. Br. at 6, but this is simply untrue. In fact, all bidders were required to provide bid information for three separate methods of compensation, and they had no control over the pay structure ultimately chosen by the State. If counsel are being paid per hearing, rather than per hour spent preparing for and representing the youth at the hearings (as class counsel believes to be true based on informal conversations with appointed counsel), then this form of compensation may indeed implicate the type of systematic barrier to the protection of youth's due process rights that class counsel must address. A flat fee (or a below-market hourly rate) may provide a disincentive for appointed counsel to do much more than show up for the hearing.

The alleged "beliefs" of the Monitor concerning the relevance of the information requested by Plaintiff, as described by the Defendants in their opposition to Plaintiffs' motion, *see* Def. Br. at 5-6, 8, are inappropriate for consideration here, for the Monitor has made no such representations to Plaintiffs' counsel. In his initial monitoring memorandum, Mr. Muhammad did not make any reference to the compensation structure or qualifications of the appointed attorneys, and he certainly did not state that such metrics were immaterial to monitoring the Defendants' compliance to the Decree. In fact, during a February 19, 2015 phone call with class counsel he stated the exact opposite of what the Defendants assert.[2] In any event, Plaintiffs' counsel should be entitled to

[2] This is not the only misrepresentation contained in the Defendants' response. Attached is correspondence between the parties regarding the Defendants' misleading assertions about a conversation that occurred between counsel on February 19, 2015. *See* Ex. One. As these misrepresentations are not relevant to the legal issue at hand, they do not

examine the Monitor as to his alleged representations to the Defendants before the Court relies on them in deciding the matter at issue.

Finally, Plaintiffs' are clearly warranted in seeking this information as part of their obligation and right to independently monitor the Defendants' compliance with the decree. *See generally Gatreaux v. Chicago Housing Authority*, 491 F.3d 649 (7th Cir. 2007). Neither *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dept. of Health & Human Resources* nor *Alliance to End Repression v. City of Chicago*—both cases concerning the applicability of attorneys' fees—hold otherwise. In *Buckhannon,* 532 U.S. 598 (2001), the Court held that attorneys were not entitled to attorneys' fees under the "catalyst theory" of fee shifting without a judicially sanctioned change in the relationship between the parties. *Id*. at 605. And in *Alliance,* following *Buckhannon,* the Seventh Circuit reversed the district court's award of attorneys' fees to class counsel who were unsuccessful in post-judgment enforcement proceedings. 356 F.3d 767 (7th Cir. 2004). Contrary to the Defendants' assertions, the *Alliance* Court did not state that attorneys generally were not entitled to conduct post-judgment monitoring. Quite the reverse: the Court cited the Supreme Court's holding in *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986) as an example of case in which the plaintiffs were entitled to compensation for successful enforcement of a decree. *See id*. at 769. *Buckhannon* and *Alliance* certainty did not undermine the right of class counsel to enforce a court-ordered decree by obtaining relevant information about the decree's implementation, which is what they seek to do here.

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warrant a substantive response. Class counsel requested that defense counsel strike these misleading representations, but they have refused to do so.

For all these reasons, Plaintiffs move that the Court grant their motion to enforce the Consent Decree and enter an order requiring that the Defendants provide to class counsel documents that convey the following information: (1) the qualifications of the counsel who are appointed to represent members of the Plaintiffs class and (2) the compensation rate and structure for appointed counsel.

Respectfully submitted:

/s/ Alexa Van Brunt ___
Counsel for the Plaintiff Class

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served the foregoing document via the Court's CM/ECF system on February 25, 2015.

/s/ Alexa Van Brunt

Sheila A Bedi

From: Sheila A Bedi
Sent: Tuesday, February 24, 2015 5:49 PM
To: Beltran, Deborah (DBeltran@atg.state.il.us); 'Dierkes, Michael'
Cc: alanmills@comcast.net; Alexa Anne Van Brunt
Subject: MH Response Brief

Importance: High

Deb and Mike:

In your response to our motion to enforce you made several misrepresentations about a conversation the three of us had on Friday, February 19, 2015. I am writing to respectfully request that you file a new response striking those references from your brief. These representations are inaccurate, misleading and frankly deeply disappointing given the collegial and professional approach we have come to expect from you and your office. It is our hope that you will strike the misrepresentations so that we can move on in manner that allows both sides to communicate freely, to problem solve together and to collaborate on our joint efforts to implement the Consent Decree. If you are unwilling to do so, we will be forced to conduct all further communications in writing in order to avoid future misrepresentations. We will also inform the court about the misleading nature of your filing.

In Fn 2 of your response, you stated that I "may have overlooked" a representation contained in your January 26, 2015 regarding the attorney appointment process. You made this representation because I asked you where and when the representation occurred. While it is true that I do not possess instant recall of the details of our correspondence (and that I didn't have that letter in front of me at that precise moment during our conversation), it is absolutely false that your representations about the attorney appointment process were "over-looked" in any way. They were evaluated and found wanting. But that is irrelevant, because during the Feb. 19 call I gave you explicit consent to represent to the Court that based on that conversation, we had resolved the issues related to attorney appointment. Given this fact, the inclusion of your assertion that your previous correspondence was overlooked can only be read as a snarky aside meant to adversely color the court's opinion of class counsel. It is thus highly inappropriate and should be stricken.

The second major misrepresentation occurs in paragraph 15. During our conversation, I suggested that one way we may evaluate whether the contracted attorneys are receiving resources sufficient to provide class members with the required due process protections is to compare the rate provided to the MH contractors with the rate counties pay conflict defenders and the rate established under the federal Criminal Justice Act. I stated that DuPage County may have one such rate, that we would research others. I also stated that this comparison is imperfect because there are significant differences between a criminal trial and an

administrative proceeding. I emphasized that this is only one way we may evaluate the sufficiency of the resources provided by your clients. You misrepresented this entirely to the Court—claiming that the comparator we intend to use is related to "federal prisoner cases" and entirely omitting the caveats I provided you in conveying this information. This was not information to which you were entitled—or which in any way is relevant to the legal question of whether we are entitled to these documents. I provided it to you in an attempt to provide context to our request and to conduct our monitoring activities with transparency and candor.

It is my sincere hope that we can address this issue without involving the court and that we can revert to the professional and collegial approach to litigation that has been characteristic of our prior dealings.

Please provide us with your response at your very earliest convenience.

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Sheila A Bedi

To: Beltran, Deborah; Dierkes, Michael
Cc: alanmills@comcast.net; Alexa Anne Van Brunt
Subject: RE: MH Response Brief

From: Beltran, Deborah [mailto:DBeltran@atg.state.il.us]
Sent: Wednesday, February 25, 2015 12:28 PM
To: Sheila A Bedi; Dierkes, Michael
Cc: alanmills@comcast.net; Alexa Anne Van Brunt
Subject: RE: MH Response Brief

Sheila,

We obviously have different understandings of our conversation, which occurred on Thursday (not Friday), February 19. Our brief is entirely accurate to our understanding of the conversation. To the extent recent communications have been strained, we view that as being entirely plaintiff-driven, with repeated references to court actions, and, now, unfounded accusations of making misrepresentations to the Court; we have made no similar threats or accusations and will continue to treat each conversation with the respect it deserves.

We certainly agree with one point you make--your position absolutely should have been set out in writing, in your letters and in your motion to enforce. Despite our repeated requests for an explanation of why Class Counsel needed the particular documentation requested to determine Defendants' compliance with the consent decree (as set forth in Paragraph 34), you never provided an explanation in writing that included the information you provided on our call. After the Court requested it when you filed your motion, we reached out to you again to try to understand your position, and we scheduled a call in advance to avoid blind-siding you. We had the call at a mutually agreed-upon time. Then, in our response, we tried to address the reasoning you for the first time explained on that call, and you now accuse us of knowingly falsely conveying that reasoning to the Court. We respectfully disagree; we gave details of the conversation in a way that is both truthful and accurate to our understanding of those details.

As to footnote 2, on our call, both of us were surprised at your asking where we'd provided information related to the assignment of attorneys--because your phrasing left both of us with the impression that you hadn't even noticed that we actually had answered your request, as we understood it then, in our January 26 letter. But then it made some sense to us, as it had struck us that your motion left the impression that we had ignored your request entirely, when we had not. Again, had you simply written to us exactly what you wanted to know about the appointment-of-counsel process, this could have been resolved. After all, as soon as we understood what else you wanted (from information provided for the first time in your motion), we agreed to provide it. Footnote 2 is accurate to our understanding of the call, and we thought it might explain to the Court why you chose not to mention our response to that request in your motion. We certainly did not intend the "snark" you are reading into it now, but in any case, it is not a misrepresentation, as it conveys our honest understanding of the conversation.

As to your second, and, arguably, larger, point, we did our best in our response to articulate our understanding of your position as to why you needed compensation information for the appointed attorneys, but we note that we have no obligation to lay out your position

in the way you would if you were to write it out. Again, you had multiple chances to write out your position, both to us and to the Court and chose not to do so. If the information we conveyed was not important to your position, then we are left confused as to why you provided it in answer to our questions. If you did not wish it to be conveyed to the Court, you did not say so to us (and, in fact, as a courtesy to you, we chose not to mention one of your points that we were easily able to distinguish in our discussion). It seems to us, from your email, that you accuse us not of a misrepresentation but of not conveying your entire position--that you wanted us to tell the Court that you told us that you recognize the inherent weaknesses in your own position regarding trying to compare the rates of the appointed attorneys for parole revocation proceedings to the rates provided to counsel for representation in other situations. We did not understand this to be a part of your reasoning as to why you need compensation information, but if you believe clarification is necessary to express your position, we anticipate that you will use your reply brief to explain it to the Court. We believe our response does not misrepresent any part of our discussion on this issue.

Regards,
Deb

PLEASE NOTE MY PHONE NUMBER HAS CHANGED

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