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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
HARTFORD, CT

LINDA DOE, ET AL. : CIVIL NO. H88-239 (EBB)

v.

MICHAEL F. HOGAN, ET AL. : OCTOBER 19, 1989

CONSENT ORDER

WHEREAS, plaintiffs filed this action on May 5, 1988 alleging the defendants failed to provide the plaintiffs with effective access to the courts as guaranteed by the First and Fourteenth Amendments of the United States Constitution; and

WHEREAS, the plaintiffs believe it is in the best interests of all the parties to settle this lawsuit; and

WHEREAS, defendants, without admitting liability, believe it is in the best interests of all parties to settle this lawsuit; and

WHEREAS, all parties consider the terms and conditions of this Order to be a fair, just, and reasonable settlement of this action;

NOW THEREFORE IT BE ORDERED, ADJUDGED, AND DECREED, AS FOLLOWS:

I. DEFINITIONS:

1. "Plaintiffs" shall include the named plaintiffs and the members of the plaintiff class as defined in paragraph 6 of this Consent Order.

2. "Defendants" shall include the named defendants, their successors in office, their agents, employees and assigns.

3. "DMH" means the Connecticut Department of Mental Health.

4. "Legal Assistance Program" means the legal assistance program as described in this Consent Order.

5. "Patient" shall mean any indigent person who resides in a DMH inpatient facility, whether as a result of a voluntary admission, involuntary commitment, emergency commitment, or as a result of involvement with the criminal justice system.

II. CLASS ACTION

6. This case is certified as a class action consisting of all present and future indigent patients of inpatient facilities funded or operated by the Connecticut Department of Mental Health who are or will be in need of legal assistance regarding their admission, treatment, environmental conditions, discharge, and other hospital-related rights under state or federal law or policy.

7. Notice of the Consent Order, as approved by the Court, shall be given to all class members as follows:

- a. A notice shall be given to each patient by placing a copy of attached Exhibit A on his or her bed no later than November 10, 1989.
- b. Thereafter, all future class members shall receive notice of this decree by receiving a copy of a DMH Patient Handbook which shall include a description of the Legal Assistance Program as outlined in part IV of this Consent Order.

III. GENERAL PROVISIONS

8. Defendants shall establish and maintain an advocacy program for indigent patients of in-patient DMH facilities in accordance with Section IV of this Consent Order.

9. In entering into this Consent Order, State officials do not admit any violation of law and this Consent Order may not be used as evidence of liability in any other civil proceeding.

10. Any violation of provisions of this Consent Order does not create a private right of action. This Consent Order is enforceable only by the parties.

11. The parties agree that this Consent Order is a final judgment in the above-captioned case.

12. The parties reserve the right to withdraw consent in the event that this order is not approved by the Court in its entirety.

13. This Consent Order shall be applicable to and binding upon all the parties, their officers, employees, their agents, assigns and successors.

14. Plaintiffs reserve the right to file a motion for costs and attorneys' fees subsequent to the signing of this order.

IV. LEGAL ASSISTANCE PROGRAM

A. INTRODUCTION

15. The creation of the Legal Assistance Program pursuant to this Order is intended to be a component of a broader legal advocacy system and is intended to supplement, not supplant, these existing services. To the maximum extent possible, these existing services will be coordinated with the Legal Assistance Program and integrated into the broader legal and other advocacy system for all DMH clients.

B. PURPOSE

16. The purpose of the Legal Assistance Program is to ensure that clients of the DMH and especially patients of its inpatient facilities have effective access to the system of justice by providing them with independent advocates and attorneys to protect and enforce their rights and entitlements.

C. SCOPE AND AUTHORITY

17. The Legal Assistance Program has the authority to serve any individual regarded as mentally ill and indigent in the State of Connecticut in accordance with the provisions of paragraphs 18 and 19 of this Agreement. However, consistent with its programmatic priorities and resources, the Program must provide advocacy assistance, including legal advocacy, to all indigent patients of DMH inpatient facilities. These facilities include Fairfield Hills Hospital, Connecticut Valley Hospital, Norwich Hospital, Whiting Forensic Institute, Cedarcrest Hospital, Greater Bridgeport Community Mental Health Center and Connecticut Mental Health Center. The Program must ensure that adequate advocacy services are offered to patients of inpatient facilities before it may provide assistance to other indigent mentally ill individuals.

18. The Legal Assistance Program has the authority to provide advocacy assistance, including legal advocacy, to indigent persons regarded as mentally ill in the State of Connecticut. However, consistent with its priorities and resources, the Program must provide assistance to patients of Department inpatient facilities regarding their admission, treatment, environmental conditions, discharge, and other hospital-related rights under state or federal law or policy. To the extent resources

permit or are available, it may offer its services on noninstitutional issues clearly related to a person's admission or discharge. The Legal Assistance Program shall not provide services, excluding services related to counseling and referral, in non-civil rights cases in connection with claims for damages against the State of Connecticut or any of its officers, departments, employees, boards or commissions; however, the legal assistance program staff may provide legal services and representation in such non-civil rights cases if the staff has attempted unsuccessfully to refer the case to a minimum of three qualified attorneys. In such cases, Legal Assistance Program staff shall maintain documentation of their efforts to refer the case, which shall be available to the Attorney General's Office upon request.

19. The Program shall seek to refer to, or arrange for assistance to be provided by, private attorneys or other public interest organizations on general legal disputes (e.g., wills, divorces, land transactions) with parties other than the State, or any of its officers, departments, employees, boards or commissions, its agents or employees. No program funds shall be used to provide legal services on such general legal issues, except in extraordinary or rare situations and where (1) no other specific resources are available; and (2) the situation is directly or indirectly related to the patient's admission, discharge, course of treatment. The extraordinary circumstances which would permit legal services on a general legal issue are to be directly or indirectly linked to treatment issues such that the resolution of the legal issue would affect the resolution of the particular treatment issue.

20. The design, establishment, operation, and administration of the Program shall insure the independence of Program staff in the provision of legal assistance to their clients. The Program shall perform its functions consistent with the Rules of Professional Conduct, and other applicable rules of legal practice. Subject to the provisions of paragraphs 18 and 19, the professional judgment of Program staff shall be exercised solely for the benefit of its clients, and the desires of any other person or entity shall be disregarded when they would either conflict with the interests of the client or impair the independent judgment of the Program.

21. The establishment, governance, funding, and operation of the Legal Assistance Program will be free from any conflict of interest, to the maximum extent possible, which might arise in its relationship with the State of Connecticut, its public agencies, private mental health agencies funded by the state, and other statewide private, professional, or service organizations involved in provision of mental health care. The funding of the Program by the defendants should be undertaken in a manner which recognizes and minimizes the conflict of interest inherent in its support of the Program.

D. ACTIVITIES

22. The Legal Assistance Program will have the capacity to provide information and referral, advice counseling, individual and group representation, and education to its clients. The Program is not intended to displace or supplant DMH's responsibility to investigate and resolve internally allegations of abuse or neglect.

23. (A) To the extent appropriate and when consistent with the Rules of Professional Conduct, Program staff will attempt to resolve most issues informally,

through discussions with hospital staff, negotiations with clinical supervisors and institutional administrators, and resort to the DMH's internal complaint procedure. In order to facilitate communication and promote early resolution of issues affecting patients rights and program implementation, the DMH and the Legal Assistance Program shall conduct regular meetings on the following basis: Both the Commissioner or his designee and the Program's Board of Directors, as well as the Program's Director, shall meet twice a year to discuss mental health policy issues and other issues affecting the relationship between the Department and the Program. A senior staff person from the Legal Assistance Program may meet regularly with the superintendent of each facility to discuss implementation of the program, including any problems that may arise with respect to program access to patients and records. Staff may also discuss, where appropriate, concerns regarding specific policies or program clients. The Program shall seek the input and advice of the Department of Mental Health prior to adopting policies, changing policies and proposing legislative initiatives unless the Program's Board of Directors determines that prior discussions with the Department of Mental Health would compromise the interests of the Program or the Program's clients. Internal policies of the Program shall not be subject to this requirement. If the Program's Board of Directors makes such a determination, the Program shall give notice to the Department of Mental Health of the basis for its decision, without revealing the nature of the policy. The Department of Mental Health may thereafter challenge the appropriateness of such a determination.

(B) In the event that the Program intends to seek judicial relief against the defendants, whether in their official or individual capacity, without first having attempted informal resolution of the particular issue(s) involved, the Program will give reasonable notice under the circumstances of that intention to the DMH or the Attorney General's Office prior to seeking such relief. The Program shall give notice to the Attorney General's Office of any judgment obtained on behalf of any person who has received or is receiving any form of state assistance and shall provide notice of the institution of suit on every occasion when the Program has knowledge that any party is a recipient of any form of state funding or is a health care facility licensed under Conn. Gen. Stat. § 19a-490 et seq. or is an individual licensed under Conn. Gen. Stat. § 19a-14. State funding shall include receipt of a state grant, contract subsidization, loan or any similar benefit but shall not include specific financial assistance to an individual for basic life support unless notice to the State is specifically required by law.

(C) The Legal Assistance Program may attend, on behalf of a client, regular hospital meetings, treatment team meetings, or portions of such meetings, where the patient has a right to attend or is permitted to attend.

(D) To the extent appropriate, the Program may also represent clients in formal proceedings, if any, concerning admission, releases, medications, treatment, and the enforcement of other related rights. The Program shall not, however represent clients in court proceedings for which legal counsel is otherwise provided by statute, such as proceedings subject to the provisions of Conn. Gen. Stat. §§ 17-178, 17-183, 17-192, 17-205d or 17-257s.

24. The DMH will provide regular and reasonable access to the patients, living environments, client meetings, and staff of its inpatient facilities for the Legal Assistance Program. Such access will include reasonable unimpeded contact with patients, without unreasonable disruption of any facility or patient treatment, e.g., scheduled meetings, group therapy, to provide information concerning legal rights and the availability of services under the Program. Contact with hospital staff shall not unduly impede the performance of their duties as determined by the appointing authority.

25. Prior to the commencement of the Legal Assistance Program, the DMH will inform all hospital staff, and new administrative and treatment staff thereafter, of the purpose and activities of the Legal Assistance Program and will facilitate a cooperative relationship between its staff and the Program. The Legal Assistance Program shall recognize the importance of consulting with hospital treatment staff so as not to unnecessarily disrupt the course of treatment. The Program shall similarly endeavor to develop a cooperative relationship with the DMH and its staff which will promote the effective access to the Program's clients.

26. The Legal Assistance Program shall act consistently with state and federal laws protecting confidential information concerning individuals regarded as mentally ill. The DMH will provide prompt and reasonable access to such confidential information consistent with all applicable state and federal laws without unreasonable disruption of any facility or patient treatment with the consent of the patients, his/her guardian, or if the patient is incompetent and lacks a guardian, with the approval of the

Commissioner of Mental Health or his designee. Under Connecticut law, all persons admitted to a mental health facility are presumed to be competent, unless otherwise determined by a court of competent jurisdiction.

E. STAFFING

27. The Legal Assistance Program will be staffed primarily by attorneys and paralegal advocates, with appropriate secretarial and administrative support. The Program will primarily rely on advocates to provide routine assistance to patients. The Program may include law students, consumers of mental health services, and others, as appropriate.

28. All Program staff will be qualified by training, experience, and personal commitment to serve individuals regarded as mentally ill who reside in inpatient facilities of the Department of Mental Health. Program staff will be adequately trained in the laws and policies of the State of Connecticut and the United States which affect mentally ill individuals. Advocates must be supervised by lawyers who have overall responsibility for their activities, and staff lawyers will be supervised by the director or supervising attorney of the Program.

29. The Legal Assistance Program will be phased-in over four years in accordance with paragraph 38 of this Order. The staffing in the fourth year will be a minimum of three patient advocates/paralegals, two attorneys, a director (who may also be an attorney) and two secretaries. The Program, in consultation with its Board of Directors, will retain flexibility regarding staffing, so long as its actions are not inconsistent with the minimal

staffing level in this Consent Order, and in particular, paragraph 31 of this Consent Order and so long as the consent of the Commissioner is first obtained if the staffing is done through the use of independent contractors, rather than the use of employees of the Program.

30. The DMH will provide, on an ongoing basis, appropriate space for a central office and will enter into an agreement with the Legal Assistance Program for the use of such space pursuant to Conn. Gen. Stat. § 17-210a(m). The initial agreement will be for a period of three years, subject to the DMH's reservation of the right to terminate for reasons unrelated to the operation of the Program upon the giving of one year's notice, and will provide space located in Beers Hall, 2nd floor, Connecticut Valley Hospital which contains 13 offices and a conference room. The conference room will be available to other Connecticut Valley Hospital personnel upon request and advance notice. Eleven of the thirteen offices will be furnished with a desk, file cabinet, chair, telephone and local telephone service for each of the Program staff included in the consent order (up to 11 staff members). Inkind support includes ongoing office supplies, copying, postage, utilities and janitorial services. If it is necessary for the Department of Mental Health to move the Legal Assistance Program, the Department of Mental Health will provide appropriate office space for eleven equipped offices in conformance with the space standards established by the Department of Public Works, as well as inkind services described above, and if the Program continues to want to be located in a central office, the DMH shall make all reasonable efforts to provide a central location in the State. Should the Legal Assistance Program elect to

move out of Department of Mental Health space when such space is available, the program will be responsible for all rental costs and support costs and the Department's responsibility for providing inkind support shall cease. Field sites will be located at Norwich Hospital, Fairfield Hills Hospital, and, in the event it is necessary for the DMH to move the central office from Connecticut Valley Hospital, at Connecticut Valley Hospital. Field sites will include a locked room, desk, chair, locked file cabinet and telephone services. At Greater Bridgeport Mental Health Center, Connecticut Mental Health Center, Whiting Forensic Institute, Cedarcrest Hospital, and Connecticut Valley Hospital, an interview room will be provided and will contain a desk, chair, locked file cabinet and telephone service. At locations other than the central office, the DMH will ensure privacy and confidentiality at all times when Program staff are providing client services at each site.

The amount of DMH inkind services and the estimated value of such services is as follows:

Year 1 (based on 8-month contribution) -

Office supplies, copying, postage	\$ 840
Office space	78,000
Furniture	1,333
Utilities	20,000
Janitorial	1,800
DMH Total In-Kind	<u>\$101,973</u>

Year 2

Office supplies, copying, postage	\$ 3,024
Office space	117,000
Furniture	2,100
Utilities	40,000
Janitorial	4,500
DMH Total In-kind	<u>\$166,624</u>

Year 3

Office supplies, copying, postage	\$ 4,536
Office space	117,000
Furniture	- 600
Utilities	50,000
Janitorial	6,300

DMH Total In-kind	<u>\$178,436</u>
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Year 4

Office supplies, copying, postage	\$ 5,292
Office space	117,000 *
Furniture	600
Utilities	50,000
Janitorial	6,300

DMH Total In-kind	<u>\$179,192 *</u>
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Four-Year Total

Office supplies, copying, postage	\$ 13,692
Office space	429,000
Furniture	4,633
Utilities	160,000
Janitorial	18,900

Four-Year DMH Total In-Kind	<u>\$626,225</u>
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* or appropriate value, based on Department of Public Works Space Standards in the event it is necessary for the Department of Mental Health to relocate the program.

The value of inkind services shall not exceed the fourth year total of \$179,192, or such other appropriate value based on public works space standards in the event that the Department of Mental Health needs to relocate the program, and shall not exceed the amount for each individual category as indicated above. Notwithstanding the \$179,192 limitation, the Department of Mental Health will provide full janitorial services and utility service so long as the Legal Assistance Program is located in a Department of Mental Health facility, and in subsequent years, the level of inkind

services for office supplies, copying, furniture and postage shall remain equivalent to that of year four.

31. By the conclusion of year four, and continuing thereafter, the Program will ensure that an attorney or advocate is available at least three days per week at Fairfield Hills Hospital, Connecticut Valley Hospital, Norwich Hospital, Whiting Forensic Hospital and Cedarcrest Hospital. At Greater Bridgeport Community Health Center and the Connecticut Mental Health Center, a Program attorney or advocate shall be available at least twice a week.

F. STRUCTURE AND DEVELOPMENT

32. In order to promote prompt and effective resolution of advocacy issues affecting its clients, the organization of the Legal Assistance Program shall generally correspond to the administrative structure of the Department of Mental Health in each region.

33. (A) The representatives for the parties agree that, in order to facilitate development of an effective legal assistance program, a qualified legal assistance program from outside Connecticut may be utilized during the start up period of the first year to perform the functions stated below.

(B) The Center for Public Representation in Northhampton, Massachusetts shall initially be awarded the contract as provider for the Legal Assistance Program, on the condition that it shall select a director and assist in training, and initial organization, for not more than 12 months, at which time the Legal Assistance Program shall be constituted as an independent nonprofit Connecticut corporation in accordance with the provisions of subparagraph (C) below. The director shall manage the Legal Assistance Program under the auspices of the Center for Public Representation during the period of the initial provider contract. The contract award with the Center for Public

Representation shall provide for an extension of time to manage the Program for longer than twelve months in case of extraordinary circumstances. In the event that the Center for Public Representation is unable to enter into an agreement to provide such services, then there shall be an award to a new nonprofit Connecticut corporation, to be set up in accordance with subparagraph (C) below.

(C) The Legal Assistance Program corporation shall be a new nonprofit corporation with the capacity to provide the services and to meet the obligations of the program set forth in this Agreement. It must have, or demonstrate the capacity to develop, reasonable expertise and experience in serving institutionalized persons with mental disabilities. There shall be three incorporators of the nonprofit corporation. The plaintiffs and defendants shall each select one incorporator. The third incorporator shall be selected by consensus of the two selected by the parties. The initial Board of Directors of the nonprofit corporation shall be appointed by the incorporators and shall be comprised of three persons with substantial experience and reputation in the creation of institutional legal advocacy systems for persons regarded as mentally ill or other similarly qualified persons. The initial Board members shall adopt bylaws for the corporation. In the event of a conflict between the terms of such bylaws and terms of this Agreement, the terms of this Agreement shall control.

34. The Program will retain sufficient flexibility and discretion to modify the program design, development schedule, and the allocation of staff to specific offices if new information indicates modifications are appropriate. Notwithstanding the foregoing, no modification may be made of the Program's scope and authority, as specified in

Part IV C of this Agreement or the Program's funding, as specified in Part IV G of this Agreement. The duties and obligations of the defendants under this Agreement shall not be modified without the consent of the defendants.

35. The parties agree that this Agreement will be adopted by the court as a final judgment in the above-captioned case. The court shall retain jurisdiction during the four year phase-in. The terms and conditions of this Agreement shall not be construed or interpreted as an admission by, or a finding that the State of Connecticut or any of its officers, departments, employees, boards or commissions have violated any provisions of the law or Constitution of the United States or the State of Connecticut.

36. The Program shall be operated under a contract with the Department of Mental Health, with reasonable reporting and review requirements. The contract is subject to the audit clause requirement of Conn. Gen. Stat. § 7-396a, and the standard contract provisions required for all state contracts.

37. The Legal Assistance Program shall report monthly to the DMH, utilizing the standard mental health information system required of all grant-fund services, and shall furnish the DMH the following information on a quarterly basis:

Number of attorneys and advocates whose services were provided

(FTE if not full-time)

Number of hours of legal services and advocate services

Cost per hour (total of money expended divided by the total hours of service)

Cost of provider overhead

Number of residents receiving services in the quarter, by type of service provided (i.e. — federal benefits, grievance, any other), at

each facility and the average number of hours each resident receives in legal services.

Any information which the DMH deems necessary to evaluate the efficiency and effectiveness of the program and the manner in which the funds of the programs are expended and which is reasonable and non-privileged.

G. FUNDING

38. Subject to the provisions of paragraphs 18 and 19 of this Agreement, the Department of Mental Health will fund all necessary expenses of the Legal Assistance Program up to the maximum annual amount specified in the following schedule:

First year of Program operation	- \$ 90,000.
Second year of Program operation	- \$209,000.
Third year of Program operation	- \$327,600.
Fourth and subsequent years of Program operation (plus reasonable cost of living adjustments in subsequent years, if such adjustments are appropriated by the Legislature and received by DMH for the following DMH accounts: Personal Services, Other Expenses, Mental Health Services Grants and Employment Opportunities Grants.)	- \$397,200.

39. The DMH reserves the right to reduce or withhold contract payment in the event the Program provider materially breaches the contract between the DMH and the provider.

40. To the extent that the population of these inpatient facilities is decreased through transfer of patients to community alternatives, funding for the Legal

Assistance Program should not decrease but the priorities of the Program may be adjusted concomitantly to reflect the needs of these Department clients, consistent with the provisions of Part IV C of this Agreement.

41. In the event that the Program receives funds or assets other than those provided by the DMH pursuant to its contract with the Program, the funding obligation of the DMH specified in paragraph 38 of this Order shall be reduced as follows: for any calendar year in which the Program receives funds or assets, other than those provided by the DMH pursuant to its contract with the Program, in excess of \$350,000.00, the funding obligation of the DMH specified in paragraph 38 of this Order shall be reduced by \$1.00 for every \$2.00 of such funds or assets in excess of \$350,000.00. In the event that such a reduction cannot be fully realized in the calendar year in which such funds or assets are received, such reduction shall be applied to the funding obligation of the DMH in the following year(s). The DMH may waive the provisions of this section.

The ceiling on outside contributions provided for in this section shall be increased for any calendar year in the same proportion by which the Northeast Consumer Price Index for the preceding year exceeds the Northeast Consumer Price Index as published by the Bureau of Labor Statistics for the calendar year in which this Judgment is entered. For purposes of this paragraph, the term "Northeast Consumer Price Index" shall be the "Northeast Urban Consumer Price Index for all Urban Consumers." issued by the Bureau of Labor Statistics of the United States Department of Labor. If, at the time adjustment of the ceiling is required, such Northeast Consumer Price Index is no longer issued, the adjustment shall be made by utilizing such other index as is then

generally recognized and accepted for similar determination of the cost of living variations.

Additionally, if for any calendar year the annual inpatient admissions for the preceding year exceeded the annual inpatient admissions for the calendar year in which this Judgment is entered by 25% (twenty-five percent) or more, the ceiling on outside contributions will be adjusted upwards to maintain the same ratio of the amount of the ceiling on outside contributions to annual inpatient admissions which exists for the year in which this judgment is entered.

H. MONITORING AND EVALUATION

42. The Board shall provide ongoing advice on program design, development, and implementation issues, and shall select the director of the Program after consulting with the attorneys for the parties in the event that a) The Center for Public Representation in North Hampton, Massachusetts is not initially awarded the contract as provider for the Legal Assistance Program or b) when the initial program director vacates the position.

43. The Board shall report to the representatives for parties annually on the activities, progress and status of the Legal Assistance Program.

44. Nothing in this agreement or the court order to be issued pursuant thereto shall preclude either party from moving the court for an order modifying or terminating the same based on existing law at the time of the motion.

45. The parties agree that their attorneys will meet no later than the beginning of the program's fourth year of operation to discuss the following two matters: (1)

the use of non-DMH funds by the Program to provide legal services beyond those authorized in Part IV C of this Order; (2) the location of the Program's offices and the desirability of maintaining one central office versus multiple offices for the Program. In the event the parties thereafter agree that this Order should be modified with respect to either or both of these matters, or with respect to any other matter as to which the parties mutually agree, this Order may, with the consent of the Court, be modified to reflect the terms mutually agreed upon by the parties.

PLAINTIFFS

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DEFENDANTS

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Commissioner of Mental Health

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So Ordered:

United States District Court Judge

Date

A True Copy
ATTEST

RECEIVED
Clerk of U.S. District Court