

03 May 2004

To: Melissa Garner

From: Sean Harrington

Subject: Bill Fyfe, Ed.D.

Ms. Garner:

*Mailed to State of
Colorado - Dept. of Regulatory
Agencies, Div. of Registrations,
Mental Health Licensing Section
1560 Broadway, Suite 888
Denver, Colorado 80202*

Thank you for taking my call the other day. This letter is the follow-up to part II of that call, concerning the above-captioned practitioner.

As I mentioned to you, I spoke with a representative of the non-profit C.A.S.A. (Court Appointed Special Advocate volunteer program), who informed me that their office does not regulate the private-practice Special Advocates appointed in divorce cases under Title 14. Rather, their office is responsible for Court-Appointed Special Advocate "volunteers" under Title 19 (dependency and neglect proceedings). I then spoke with Sam Benson, a family-court liaison in the First Judicial District of Jefferson County, who informed me that, to his knowledge, there is no oversight committee, board or Program Director over the group of private-for-profit practitioners appointed in divorce cases as "Special Advocates." He admitted that there seems to be a "void." My research has led me to conclude that, for the purposes of addressing ethical complaints, there are only two possible avenues -the Mental Health Licensing Section of the Division of Registrations or the court, itself. However, while a case is on appeal (as mine is), a district court is divested of jurisdiction: *"[O]nce an appeal is taken, a trial court is divested of jurisdiction to determine substantive matters that directly affect the judgment being appealed unless the appellate court has issued a remand order."* Molitor v. Anderson, 795 P.2d 266 (Colo. 1990), and People v. Dillon, 655 P.2d 841, 844 (Colo. 1982) A trial court's jurisdiction is not restored until the mandate from the appellate court issues. See Hrabczuk v. John Lucas Landscaping, 888 P.2d 367, 368 (Colo. App. 1994). This leaves only your office.

The details of my complaint are contained in the attached letter [to Dr. Fyfe] (attached hereto as Exhibit A). I do realize, as you mentioned, that your office ordinarily does not intervene in fee disputes. However, I believe that the set of unique circumstances reclassifies this issue from a simple fee dispute into an *ethical* one. The reason for this is because a court-appointed therapist, guardian *ad litem*, special advocate, etc. is conferred absolute quasi-judicial immunity for their evaluations and recommendations where their activities are intimately related and essential to the judicial decision-making process. Awai v. Kotin, 872 P.2d

1332 (Colo. App. 1993). However, Dr. Fyfe appears to be operating under a false notion that this immunity is germane to *carte blanche* authority to ignore the court order (Exhibit B) and waive own Contract for Service (Exhibit C) for his unjust enrichment. The notion is false because, it is the nature of the acts, not simply the status of a person as a therapist, that determines the availability of immunity for the challenged acts and the extent of protection afforded by that immunity. (See *e.g.*, Collins v. Tabet, 806 P.2d 40, 52 (N.M. 1991)). “Extortion” and breach of contract are not acts that are part of the judicial decision making process. Dr. Fyfe has also heard my grave concerns for safety and privacy regarding personal information as to my place of residence, employment location and other information, which he has entered into verbal and written covenants (see e.g., Exhibit D) with me to keep confidential – specifically from my ex-wife. However, because of his aberrant behavior concerning his own Contract for Service, I fear that I cannot trust him with this information and, further, I fear that he may release this information in retaliation of my complaint, whilst believing that he is immune from civil action because of quasi-judicial immunity. During this time, Dr. Fyfe, essentially, can and may do anything that he chooses with little or no accountability and he is able to exercise a great deal of potentially destructive power over myself and family. It is these factors that necessarily separate Dr. Fyfe’s relationship to me from the ordinary therapist-client relationship.

Dr. Fyfe cannot be allowed to extort clients who have been ordered to use his services or submit to other forms of subjugation not expressly provided for by court order, merely because he is operating under quasi-judicial immunity and, apparently, in a vacuum by which there appears to be no governing oversight or review board to hear complaints regarding his practices. Please forward my complaint along with a brief verbal explanation to the Board prior to their next meeting.

...with kind regards,



Sean Harrington