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State of Colorado  
**Department of Regulatory Agencies**  
**State Board of Psychologist Examiners**  
1560 Broadway, Suite 880  
Denver, Colorado 80202-5146

### Request for Reconsideration

Dr Martinez:

The purpose of my letter is to request reconsideration of regarding the matter of Bill Fyfe in light of new evidence and the passage of House Bill 1251, which grants the Board greater discretion in matters of court appointed special advocates.

As I read the bill, the Board now has greater discretion to determine if the actions of a court-appointed expert are intimately associated with the court's decision making process and, thus, are within or without the jurisdiction of the Board. This broadened power is in accord with many court decisions from several jurisdictions:

- 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. Collins v. Tabet, 806 P.2d 40, 52 (N.M. 1991)
- "[a] guardian ad litem would be immune in exercising such functions as . . .making reports and recommendations to the court in which the guardian acts as an actual functionary or arm of the court." Gardner v. Parson, 874 F.2d 131, 146 (3d Cir . 1989)
- Conduct intimately related to the judicial process justifies the extension of quasi-judicial immunity. In determining whether the guardian's conduct is protected by absolute immunity, the courts engage in a "*functional approach*" analyzing the "*nature of the duties performed and whether they are 'closely associated with the judicial process.'*" Cok v. Cosentino, 876 F.2d 1, 3 (1stCir. 1989) ("*A GAL typically gathers information, prepares a report and makes a recommendation to the court regarding a custody disposition.*") (also citing Cleavinger v. Saxner, 474 U.S. 193 (1985) *Id.* at 200)

In filing this request for reconsideration, I need to concatenate several new claims, based on newly acquired evidence, which occurred after the initial filing of my complaint:

- (1) Bill Fyfe requested my implied promise not to sue him in exchange for “promised” visitation/reunification with my daughter this summer and completion of his Report (which he said would contain that –and, it does). (see Affidavit of Sean Harrington, dated May 26<sup>th</sup> 2004, attached hereto and made part hereof by reference as, “**Exhibit A.**”)
- (2) Bill Fyfe conditioned the continuation of his court-appointed work on the “withdrawal” of my complaint with this Board. (see Verified Transcript of Voice-Message Left on Sean Harrington’s Voice-Mail on May 28<sup>th</sup> 2004 9:55a.m. C.S.T. prepared on June 2<sup>nd</sup> 2004, attached hereto and made part hereof by reference as, “**Exhibit B.**”) I have retained a digital copy of this voice-mail.
- (3) Bill Fyfe then incorporated his objection to my filing of a complaint with this Board into his June 11<sup>th</sup> 2004 Report to the Court, which is retaliation for the exercise of First Amendment Petitioning Rights and protected speech. (See p. 6, lines 38 – 40: “Sean filed a grievance against the SA during this investigation. He has refused to pay the court ordered fees. The SA decided to write off these fees and finish the investigation the best interests of Shelby.” Elsewhere in his Report, he frequently references my choices in pursuing an appeal and in challenging him on the fee issues. Clearly, these references to his personal compensation are not among judicial delegated responsibilities that are intimately associated with the judicial decision-making and fact-finding process. A copy of his Report is attached hereto and made part hereof by reference as, “**Exhibit C.**”
- (4) Note that, in his voice-message (Exhibit B), he refers to the phone conversation described in my affidavit (Exhibit A) as an issue that, “we have settled,” yet, in his Report, he categorizes it as my refusal to comply with a court order, which he finally had to, “write off.” This not only infers that there was no “settlement,” or “agreement,” between us, but that I am a contemnor of the court order and, thus, am still liable (recall that, as SA, he is considered an “arm of the court.”)

(5) Note that Exhibit A and Exhibit B were both notarized within one or two days of the alleged conversation, and that both were notarized (and filed as exhibits with the court) about two weeks before he filed his Report. In other words, he never provided me with any inkling what might be in his Report and, based on the dates of the exhibits, I could not have possibly constructed this argument as an after-thought to reading his caustic and factually inaccurate report. In fact, his Report appears to have been written in retaliation of the position that I took with him relating to the ethical violation that I earlier brought to your attention. To support this contention, I have included the *former* Special Advocate's Report, attached hereto and made part hereof by reference as, "**Exhibit D.**" You can see, clearly that the two Reports do not describe the same person. Yes, I understand that the substance of the Report, other than the extrajudicial aspects that I raised in item No. 3, hereinabove, are not within your jurisdiction to question, but the incredibly in-apposite substance of the two reports suggest that something here is not right – and may further support my contention.

(6) In an email reply to me, Bill Fyfe has indicated that it is his goal to "create a record" with the Board to make himself appear to have written off the fees for the sole purpose of the best interests of my daughter because he is the more mature and well-reasoned party. If he has already, or attempts to portray himself this way, be assured that the reason he wrote off the fees is because he is aware that he has a losing legal position (which he admitted in the phone conversation of Exhibit A), that there was no "settlement," and that, in reluctantly forfeiting the money that he had no right to charge [me], he ultimately took his revenge out in his Report –knowing the difficulties that he presented for me in overcoming that Report through great expense and effort.

...with kind regards,



Sean Harrington