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18 April 2005

Amos Martinez, Ph.D.
State Grievance Board
1560 Broadway, Suite 880
Denver, Colorado 80202

RE: Bill Fyfe / VIA EMAIL

Dear Dr. Martinez:

Please allow this letter to serve as a supplement to my complaint filed this past Friday afternoon. I simply wanted to point out, with this letter, that I believe that Dr. Fyfe's conduct in leveraging his fraternity with Judge Tidball¹ to collect these improper fees falls outside the scope of his judicially delegated special advocate duties, as contemplated under C.R.S. §12-43-215(7), as necessary for the Board to take action in this matter.

The scope contemplated in section 12-43-215(7) is precisely the same scope that quasi-judicial immunity (from civil suit) applies to and from whence the statutory language ("acting within the scope of court appointment") is borrowed. Therefore, it may be helpful to look at case law for the application of quasi-judicial immunities for special advocates to determine what does and what does not fall within the scope of judicially delegated duties.

"Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction." *Pierson v. Ray*, 386 U.S. 547, 553-554 (1967). With this judicial immunity firmly established, the U.S. Supreme Court has extended absolute immunity to certain others who perform functions closely associated with the judicial process. (See, e.g., *Butz v. Economou*, 438 U.S. 478, 513 (1978) (federal hearing officers and administrative law judges); *Yaselli v. Goff*, 275 U.S. 503 (1927), *aff'g* 12 F.2d 396 (CA2 1926) (federal and state prosecutors); *Imbler v. Pachtman*, 424 U.S. 409, 424-426 (1976) (same); *Briscoe v. LaHue*, 460 U.S. 325, 335 (1983). (witnesses (including police officers) and grand jurors because they are "integral parts of the judicial process and, accordingly, are shielded by absolute immunity"). In *Pierson v. Ray*, *supra*, the Court held that absolute immunity was essential to protect the integrity of the judicial process. 386 U.S., at 554. Thus, I believe that the question for the Board must be: **Was Dr. Fyfe's conduct [in asserting the improper fees, and using *ex parte***

¹ Judge Tidball is the only judge that Fyfe names and praises by name in his online newsletter publications (see Fyfe's Winter 2004 quarterly issue, entitled "Divorce Muda" located at www.columbinecounseling.com)

communication with the judge in violation of Standard 18 of CJD 04-08 to collect against them after he had represented [to the client and to the world] that he had already waived them] part of the judicial decision-making process?

To answer that question, one might need to ask, “**Exactly what is the scope of a special advocate in the judicial decision-making process?**” Under Colorado law, quasi-judicial immunity extends only to those special advocate’s functions intimately related and essential to the judicial decision-making process. *See Dalton v. Miller*, (Colo. App. 1999); *Awai v. Kotin*, 872 P.2d 1332 (Colo. App. 1993). The opinion in *Dalton* observes that this immunity is usually reserved for expert who is, “appointed by and reports directly to the court,” as opposed to an expert hired by the opposing parties. In *Myers v. Morris*, 810 F.2d 1437, 1466 (8th Cir. 1987), the court found that guardians *ad litem* are enjoy this immunity for their functions of testifying before or making recommendations to the family court. The same conclusion (and description of duties) was reached in *Gardner v. Parson*, 874 F.2d 131, 146 (3rd Cir . 1989), *Cok v. Cosentino*, 876 F.2d 1, 3 (1st Cir. 1989) *Meyers v. Contra Costa County Dep't of Social Servs.*, 812 F.2d 1154 (9th Cir. 1987). The court in *Cok* held that “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.” *Id.* (quoting *Cleavinger v. Saxner*, 474 U.S. 193 (1985) (quotations omitted)). “Quasi-judicial immunity extends to those persons performing tasks . . . integral or intertwined with the judicial process.” *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir. 1994)

The matter of Fyfe’s extortion of these fees has nothing to do with testifying about parenting skills or making recommendations to the family court. It is neither “integral [n]or intertwined with the judicial process,” *Bush, supra*. Rather, this matter is squarely outside the scope of judicially delegated duties because it is an issue of a personal compensation and suspect financial gain –one that may be enhanced and influenced at Fyfe’s own request. In the case of judges (from whence the quasi-judicial immunity, afforded to special advocates, is derived), in both *Kubat v. Kubat*, 124 Colo. 491, 238 P.2d 897 (1951) and *Board of County Comm'rs v. Blanning*, 29 Colo. App. 61, 479 P.2d 404 (1970), disqualification of a judge was required if the Judge had a, “pecuniary interest in the outcome of the litigation.” *Id.* Similarly, evident partiality is said to be found where the subject of a grievance concerns a quasi-judicial appointee ’s own employment. (see chapt. “Disqualification of quasi-judicial personnel” *Flamm, Richard E.*, *Judicial Disqualification*, (Little, Brown & Co. 1996) at § 29.7.2).

. . . with kind regards,


Sean Harrington