

COMMISSION MEETING MINUTES

September 30, 2014

Video Conference Sites

Chicago:	J.R. Thompson Center	100 West Randolph, Room 9-036
Springfield:	Capitol City Training Center	130 West Mason Street, Room 104

Members Present

Andrea Schleifer, Vice-Chairman
Rev. Barbara Berry-Bailey
Inez Torres Davis
Dr. Sharon Jenkins-Collins
Marlene O. Rankin

Members Absent

Anthony E. Rothert, Chairman
Senator Don Harmon
Professor Lawrence Schlam
Senator Ira Silverstein
Brian N. Rubin

Executive Staff Present

Dr. Mary L. Milano	Executive Director
John H. Wank	General Counsel / Deputy Director for Programs
Veronique Baker	Director, Legal Advocacy Service
Bobbie Fox	Director, Human Resources
Helen Godlewski Brownfield	Director, Office of State Guardian
Gloria Lasley	Director, Finance and Fiscal Operations
Gia Orr	Director, Community Rights, Relationships and Resources
Teresa Parks	Director, Human Rights Authority
Awisi Quartey	Director of Policy and Training
Constance Umbles-Sailers	Confidential Assistant to the Director
Florence P. Martin	Private Secretary to the Director

Meeting was called to order at 1:13 pm. A quorum was not present.

DIRECTOR'S REPORT

Dr. Mary L. Milano

Since the last Commission meeting there have been some developments, both in budget and programming. With regard to budget the Agency is a little ahead more ahead of spending than it would like to be which is mostly personnel related. There's not a big concern because we are looking for a special appropriation from the GAC fund which will still leave a considerable balance in the fund.

There have been 2 major developments:

- The Agency has made a lot of progress in a new initiatives we're calling Community Rights, Relationships and Resources. This includes both the establishment of a statewide Human Rights Authority (HRA) panel, (which we hope will be authorized at the next Commission meeting where a quorum is present), but for now will begin operating through the authority of the regional HRA panels. Its focus will be issues arising in non-traditional placements, community placements, jails, schools and a variety of settings that we have some expertise in but would like to develop a body of knowledge and work that crossing regions.
- The Agency is sorry to lose the services of John Wank, the Agency's General Counsel of close to 30 years. He will continue to be involved in guardianship in DuPage County, so we expect to communicate with him from time to time. Director Milano stated it is hard to express the degree of significance of what Mr. Wank's service to the Commission and the people we have served over the years represents. It is an outstanding record of public service, commitment, professional ability and genuine human engagement and concern which will be very difficult to replicate.

Aside from these 2 developments, there are many things currently on hold-if not formally, informally-until after elections the first week of November. Election outcomes could mean any number of different things for the Agency.

LEGAL REPORT

John Wank

Mr. Wank brought the Commissioners up to date on the issues surrounding Murray Developmental Center litigation. Murray is one of the State's still standing centers for persons with developmental disabilities.

In the absence of OSG Director, Helen Godlewski Brownfield, General Counsel Wank began by bringing the Commissioners up to date on the closure of the Murray Developmental Center. Murray Developmental Center is a state operated facility for persons with developmental disabilities located in Centralia, Illinois in Clinton County. Governor Quinn announced in early 2013 that there was a plan in place to close the facility by the end of the calendar year: it is still open. At the time there were about 160 individuals at the facility, 30 of which were OSG wards. We were able to agree to move 21 of the 30 OSG wards, 9 remain in the facility. Of the 21, 1 has since died and the others live in a variety of other placements throughout the State, mostly in small, community integrated living arrangements (CILA's). Mid 2013, a lawsuit was filed seeking to enjoin the Governor and the Department of Human Services from the closure that had been announced. There was a case filed in Federal court by a parents group affiliated with Murray. The Federal court entered injunctive relief that prevented further movement of people from the facility unless an individual's parent or guardian agreed to the placement. This didn't total stop movement, but did place restraints that were not there before. In November there was a trial in the Federal court matter that lasted 3 days: the court took under advisement all the testimony elicited at that trial and indicated that it would issue a decision sometime in spring. At the time of the Commission meeting, a decision had yet to be made; we were expecting a decision by Judge Aspen soon.

A second lawsuit was filed last summer in state court in Clinton County, Illinois. It was done without notice to any parties affiliated with the state, including OSG, and sought to enjoin OSG specifically from relocating any of its remaining wards and wanted a review for all of the wards that had been removed from Murray. There was a quick ex parte hearing where a temporary restraining order was put in place. The judge agreed with the suggestion from the petitioners: that a local attorney should be appointed as guardian ad litem for the limited purpose of reviewing the State Guardian's desire to place any of its wards. The guardian ad litem is the local public defender in Clinton County, Stuart Freeman. He serves as a type of overseer: if OSG desires to move a ward from Murray, Mr. Freeman's blessing is required. Since his appointment last summer, he has yet to agree to any movement of OSG wards. We have wards that have expressed their desire to move and some good, sound placement choices have been offered. We have litigated a few of those cases and attempted to litigate others—the results have been spotty. We were successful in moving one ward whose County of probate was based in Kankakee County. That ward happily resides in a south suburban CILA outside of Chicago. We've tried to move at least 4 other individuals with no success. We are going to try again; we have 2 more cases in motion.

We appealed the Clinton County decision that restrained our placement activities, appointed the guardian ad litem and caused delay for the remaining OSG wards at Murray. We appealed that to the 5th District appellate court and the decision was entered in the past 60 days. We lost on every point; we've advised the Attorney General that we wish to appeal to the Supreme Court.

Director Milano clarified that when Mr. Wank makes reference to ‘we’ or ‘our’ he doesn’t mean our attorneys—although our attorneys are actively engaged in advising—but the attorneys who are arguing are from the Attorney General’s office.

Mr. Wank also noted that while we were litigating over 9 wards, at one point there were 18 different Assistant Attorneys General working on their case. He said he liked that: especially when you consider who are wards are and the extent to which they have been disadvantaged in life. By definition OSG serves as their guardian because no one else has been found to be willing or able to represent their interests. The fact that so many attorneys from the Attorney General’s office and the trial and appeals division working on behalf of these disabled adult wards of the state is great. He wished he could report better results, but our resolve hasn’t lessened.

There have been recent developments in a lawsuit filed in Marion County last year which is somewhat related to the Murray case in that it has similarities. The theory in that lawsuit was that OSG should be prevented from agreeing to place 4 individuals from an Intermediate Care Facility for persons with Developmental Disabilities (ICFDD) into a CILA. The facility in question was a 16 bed facility and the CILA was a 4 bed facility—so we desired to move our wards from a 16 bed facility to a 4 bed facility. However, we hadn’t yet concluded that the wards would move; we were at the point where we were considering the idea. Outside parties were presenting OSG representatives with evaluations, professional assessments, information that a guardian is supposed to digest and weigh to consider whether the status quo was preferable or change is preferable. We were weighing alternatives on the day we were sued. As in the other case, no notice was given, a temporary restraining order was entered, a guardian ad litem was appointed and OSG was restrained. Commissioner Rubin asked what standing they had. John Wank answered that it was brought by a social worker or nurse employed by the ICFDD in her individual capacity—not as an employee—and based on her prior relationship with the 4 wards. The Attorney General challenged that standing, it is an issue they argued in the trial court but the court allowed the petition to go forward. We have not appealed yet; we’re trying to make a good record on the trial level. We are still trying to work it out with the other side.

Commissioner Jenkins-Collins asked if the motivation behind the suit was money. Mr. Wank explained that it plays a part and if it can happen with 4 individuals in a very small County downstate, involving a relatively small ICFDD, where else may it happen? Some of ICFDDs around the state have a more OSG wards and a lot larger census, some having well over 100 people. At one facility, OSG accounts for the majority of their census. If you are a facility operator that doesn’t want to see change and fear the idea of individuals moving and having empty beds, those are the ones that may be looking at OSG. Other ICFDD operators have been meeting privately to discuss their options. The Marion County suit could easily be a template for other litigation to come; there could be copycat lawsuits filed seeking to enjoin OSG from moving wards. It also runs afoul of a Federal court consent decree entered into by Governor Quinn, the Department of Human Services and with the full legal support of the office of Lisa Madigan. Various State officials have signed on to the LIGAS consent decree which provides for an orderly transition process through which people now residing in ICFDDs will be offered new residential alternatives. It doesn’t mean they’ll all move, only that they’re being offered the opportunity to consider something new: if they like the alternative, then they may move. There are many OSG wards that are covered by LIGAS. It is also a matter of trust. For some families

the larger facilities are all they know and their family member has been living there for a long time. They feel safe with their choices; there's a fear of the unknown. Lastly, administrators have a different set of fears. They have operated successfully for many years; 20 or more years ago the larger ICFDDs were considered state of the art and the alternative larger state operated facilities. The state set up a structure that provided reimbursement for the care they offer. Only recently has the state modified the conditions for reimbursement to encourage money to go into the community more than it did in the past. The financial dynamics are interesting.

Lastly, Mr. Wank reminded the Commissioners that it was time for annual ethics training. He encouraged them to please do the training and submit their signed certificates to Florence Martin before the June 30th deadline.

FISCAL REPORT

Gloria Lasley

We are currently in fiscal year 2014 which ends June 30th. Our appropriation for this year was \$10 million from the General Revenue Fund and \$500K from the GAC fund for a total of \$10.5 million. Year to date expenditures so far are about \$8.1 million, with a ball park prediction of overall spending for the year at \$9.7 million with a good margin of error because we don't always know when people will give notice of retirement, etc. From the General Revenue Fund we may be about 3% below budget. Our headcount for the year averaged about 104 which equals about 3% below our maximum which accounts for the monies we did not spend. Headcount recently hit 107, but there is one person on an unpaid, long term leave so 106 is the headcount that is actually costing us money. We do have a lot of hires in the pending, some of which will come out of the GAC Fund as talked about previously.

Our FY 2015 budget request was about \$10.6 million from General Revenue and \$700K from the GAC Fund, for a total of (rounding up) \$11.3 million. This is a 5% increase primarily due to AFSCME increases and we increased our budget for retirement payouts: vacation time and other benefit time that people have on the books they may receive when they retire. We increased this amount because in FY 2015 26% of our staff will be eligible for retirement. It is hard to predict how many of them may retire; however, we're budgeting for a little more than we needed the last few years and also why we're trying as aggressively as we can to transition people with the GAC Fund to train and move into those positions when needed.

ACTION ITEMS

Motion was made by Commissioner Rubin to approve the minutes from the December 17, 2013 Commission meeting and seconded by Commissioner Jenkins-Collins. Minutes were approved.

CLOSED SESSION

Motion was made by Commissioner Schleifer and seconded by Commissioner Torres Davis to go into closed session to discuss personnel matters.

General Counsel Wank reminded the Commissioners that during a closed session no official action may be taken. They may discuss the matter for which they are going into closed session,

and can make recommendations during the closed session that may be adopted when you adjourn and return to open session. The closed session must still be recorded with written minutes.

When open session resumed, Commissioner Schleifer motioned that effective for FY 2014 retroactive July 1, 2013 to June 30, 2014 that the Agency's Executive Director, Dr. Mary L. Milano, receive a 6% raise. Motion was seconded by Commissioner Torres Davis.

Motion was also made by Commissioner Schleifer that for FY 2015, effective July 1, 2014 to June 30, 2015, that the Agency's Executive Director, Dr. Mary L. Milano, receive a 4% raise. Motion was seconded by Commissioner Torres Davis.

Both increases were approved.

Human Resource Director Bobbie Fox informed Chairman Rothert that for audit purposes she needed him to put the details of Dr. Milano's increases in a memo. Chairman Rothert agreed.

Prior to the start of Program Reports, Director Milano had to leave due to an emergency at her son's school. She indicated that General Counsel Wank would speak on her behalf for the rest of the meeting. She thanked the Commissioners for their confidence.

HUMAN RIGHTS AUTHORITY

Teresa Parks

Director Parks gave an update on the HRA's staff situation for those new to the Commission. There are a total of 9 staff members statewide in the HRA program; one member-Michael Pinter-recently retired. Mr. Pinter covered the very large regions of Metro East and Springfield HRA. He worked for the Commission since 1995 covering those regions his entire tenure. He covered a lot of ground geographically and in the disabilities rights arena, was an outstanding employee and he will be greatly missed. We do have permission from GOMB to post a vacancy for the Metro East region. The Springfield region is now being covered by Jon Burnet who was previously in our Rockford region. Mr. Burnet requested and was granted a transfer to Springfield and he is a managing administrator supervising the Northern regions as well as covering the Springfield authority. Director Parks is currently covering part of the Metro East region with the assistance of staff. Approval has been given to bring back a retiree for a 75 day appointment to help fill in the staffing gap until we are able to fill the vacancy. The position that Mr. Burnet left in Rockford was filled in March by an employee-Mona Lisa George-who was hired to cover the Northwest HRA and Rockford. She comes to the Agency with many years experiences in human services; most recently she worked for the Inspector General for Health Care and Family Services.

The HRA staff met in April for a training day at the Illinois State Board of Education (ISBE) offices and met with ISBE officials to discuss special education issues and get current training on some of the special education requirements. We hope that it will benefit us in future HRA cases.

For the benefit of the new Commissioners Director Parks explained that even though we have 9 paid staff, we have a group of 81 volunteers across the state that provides support for the program. At any given time we there are term expirations or individuals leave for various reasons, etc. There are currently have some vacancies in the Northern and Southern regions and we're constantly looking for people to fill those positions. She asked that if the Commissioners knew of anyone interested in this type of work to please get in touch with her.

The HRA is engaged in ongoing volunteer recruitment efforts. There is a student intern assisting in volunteer recruitment: sending out mailings, etc. and we do utilize quite a few student interns in our work. We have had contact with Illinois State University in Bloomington and Bradley University in Peoria; Awisi Quartey and Director Parks also conducted some student intern interviews at the University of Illinois Springfield. One of the interns in the IT department has been helpful by creating a protected website for our HRA volunteers that will be a resource for them for program issues, special education issues, disability laws etc.

The HRA also work very hard on conducting public awareness activities. Several staff members in the past couple of months have been involved in informational fairs to get the word out about the HRA and its availability. The student intern has also been involved by sending out public awareness materials.

HRA trends continue to be the same as last year. Most complaints come directly from people with disabilities or their family members. More than half of the complaints involve mental health related issues and involve mental health facilities. These can be anything from state operated facilities to private psychiatric hospitals, hospital psychiatric units, community mental health providers and hospital emergency rooms treating people with mental illness in the ER. We have seen a recent increase in some nursing home related cases. Most complaints we receive center around some fairly regular issues: inadequate treatment or services or treatment plans not being followed. We get a fair number of complaints about admission, discharge and transfer practices as well as medication issues. Most of those issues concern forced medication and whether or not an appropriate criteria has been met to force medicate an individual. More than 90% of the recommendations that we issue in substantiated findings are accepted and implemented by providers.

There was an earlier discussion about costs related to LAS cases and, as a comparison, for the HRA the cost is about \$28 per person benefited from the recommendations that are implemented.

Lastly Director Parks called the Commissioners attention to an item in their information packet which outlines the Community HRA Project. This project is a work in progress and we would like to proceed and devote more resources to it, if we get the appropriate approval that we want in terms of staffing.

Commissioner Rankin inquired as to whether the HRA conducts or has conducted investigations on reports seen on television regarding abuse in a nursing home that was taking place and videotaped. Director Parks answered that the HRA is a mandated abuse reporter. They would typically take a complaint like and immediately involve the entities that have authority to step in

right away and protect the individual. The HRA may go in and look at issues peripheral to the abuse for example the policies, reporting requirements, staff training or anything that may have led to the abuse but the actual abuse we would involve the authority right away. Commissioner Rankin wondered how such issues are resolved. Commissioner Rubin stated that the Attorney General has a unit that is responsible and Director Parks said for nursing homes it would be the Illinois Department of Public Health that has the authority and oftentimes they may even involve local law enforcement. The responsible entities would go in right away to protect the individual and separate the alleged abuser from the situation. The HRA may look at the abuse complaint itself and look at what may have contributed to it, but leave the actual abuse investigation in the hands of the entities that can step in immediately and have that kind of enforcement authority. The HRA works mostly with rights protection and making systemic changes to policies, procedures and practices that would hopefully keep such instances from happening in the future. The HRA does not have enforcement authority.

Commissioner Rankin said that she wondered about nursing home personnel and to what extent there have been background checks for personnel, etc. Director Parks said that was a good point because there are certain requirements that must be met and there are background check procedures that facilities are supposed to follow before they hire anyone. They are to be sure that those background checks are done and if someone is found to abuse or neglect an individual, the facility is responsible for reporting that individual to a registry so in the future they will not be hired by another entity. The HRA has looked into situations and checked to see if they have been using the background check registry, have they conducted the appropriate screenings that they're required to do when they hire individuals.

John Wank gave an example of the HRA focusing on making systemic changes. On the issue with background checks, the Authority observed that in Illinois we have different background check registries for different disciplines that weren't entirely integrated. For example, an employee may undergo a background check working through DCFS, there may or may not be a taint against that employee but it is kept by DCFS. However, if that person leaves and goes to work in an Independent Care Facility licensed by a different state agency that information may not necessarily transfer with the employee. The HRA has previously recommended integration of all the registries so that information can be shared. It was the HRA's perspective, putting together all of the different pieces and making a recommendation for statewide, integrated change—that's their strong suit.

LEGAL ADVOCACY SERVICE

Veronique Baker

LAS employs 12 individuals throughout the state of Illinois; 10 attorneys statewide who handle the mental health trial calls. We recently hired an attorney to cover the Springfield area and have interviewed and selected an attorney for the Sangamon County area. The LAS attorney in the Egyptian office is retiring, her last day will be June 30th, 2014 and we have just received the applications to fill her position. We will go there to interview individuals and in the interim she has agreed to come back on a 75 day contract to help train the new attorney when hired. The area is located far downstate and the retiree has been there for 20+ years. It is a system that only she knows so it will be nice to have the new attorney introduced to all involved by her. We have also been approved to hire a new attorney in the Chicago area. It is our hope to hire a knowledgeable staff attorney, with the understanding that mental health law is not an area that most people are

knowledgeable. The individuals we've been lucky to hire recently are experienced trial attorneys. We were fortunate and hired a gentleman who is also a registered nurse, has worked in a nursing home with extensive dealings with individuals who have mental illnesses. He knew about psychotropic medications and our clientele is not someone unfamiliar so he fit right in. With his extensive trial experience he knows how to handle himself in a courtroom. It was not hard to get him up to speed; he has been handling hearings for 3 weeks in Sangamon County and things are going well.

We have had oral arguments before the Illinois Supreme Court 3 times this year; we've had one decision and are awaiting 2 others.

We continue to receive complaints from individuals in the prison setting regarding psychotropic medication; whether they're supposed to be receiving it, if they are rightfully being forced to take medication, etc. There's a continuing situation that is occurring with individuals who are charged criminally and are unfit to stand trial. They're sent to Elgin Mental Health Center and they get them fit, then they're sent back to Cook County jail who says, 'oh no, they're still unfit.' This person never gets to have their day in court. There is a gentleman who calls regularly and it's not something that is in our mandate, we really don't know how to handle it. Director Baker stated that she has reached out to his Public Defender and is awaiting a return phone call. If she doesn't receive any response the next step will be to reach out to an organization such as Equip for Equality. This is not the first complaint; there are 2 others regarding individuals in the prison setting that have expressed their concern about their psychiatric treatment.

Meeting was adjourned at 3:00 pm.