

COMMISSION MEETING MINUTES

June 15, 2010 1:00 PM

Video Conference sites:

Chicago:	Thompson Center	100 West Randolph, Room 9-036
Springfield:	Capitol City Training Center	130 W. Mason St., Room 104
Carbondale:	So. IL University Morse Library	ISS Conference Room

MEMBERS PRESENT

Anthony E. Rothert, Chairman
Andrea M. Schleifer, Vice-Chairman
Kathleen Ryg
Senator Don Harmon
Kenley R. Wade

MEMBERS ABSENT

Senator Ira Silverstein
Dr. Seymour Bryson
Representative Angelo "Skip" Saviano
Inez Torres Davis

EXECUTIVE STAFF PRESENT

Chicago

Dr. Mary L. Milano	Executive Director
John H. Wank	General Counsel / Deputy Director for Programs
Veronique Baker	Director, Legal Advocacy Service
Helen Godlewski Brownfield	Director, Office of State Guardian
Florence P. Martin	Private Secretary to the Director
Constance Umbles-Sailers	Confidential Assistant to the Director
Danielle Welliver	Director of Policy and Training

Springfield

Carol R. Tipsord	Director of Fiscal Operations
Teresa Parks	Director, Human Rights Authority

EXECUTIVE STAFF ABSENT

Bobbie Fox	Associate Director Human Services
------------	-----------------------------------

Chairman Rothert called meeting to order at 1:10 pm. A quorum was not present.

DIRECTOR'S COMMENTS Dr. Mary L. Milano

Director Milano began by saying the Executive staff has been joined by Danielle Welliver to take over the position of Director of Policy and Training, with the primary responsibility of reinvigorating and expanding the volunteer initiative. Danielle was with the agency previously in another capacity and also did some legislative work.

She then stated we have been following the budget negotiation process carefully, having testified a number of times on various aspects of the budget and related bills. Not having received any new information, she looked to Senator Harmon as to what information he may have. He (Senator Harmon) stated that we do have a budget that has passed, they've appropriated all the revenue they expect to have during the year--primarily in lump sums--and have directed the Governor to use his discretion to fund things on a priority basis. Director Milano said at the last meeting of chief fiscal officers, Director Vaught appeared to be aware of issues that our agency and others are facing regarding being appropriated funds to meet our payroll; therefore requiring us to lay off 21 employees, most of which could not be laid due to the agreement between AFCME and the Governor's.. We intend to look for emergency relief with respect to personnel.

We had a very successful legislative session, largely through the efforts of our legislative members.

We continue to move forward: thus far personnel are on a stable level. We are in the process of hiring a lawyer for the Legal Advocacy Service and hope to have that accomplished by the end of the summer.

We have completed the compensation plan for the current fiscal year for all of our merit compensation staff and are looking forward to moving into the next fiscal year; the next legislative session, again, a revamped volunteer program and as much as we can do for staffing levels and compensation for the entire staff. We will also host again as part of the Illinois Institute of Technology's Stuart School of Business MPA program intercultural exchange, 3 interns from the People's Republic of China.

Commissioner Schleifer asked about if we anticipate increases for merit comp employees. Director Milano said we are not anticipating any increases; what we did this year was gave ½ of the merit comp staff increases per a schedule published by CMS, indicating a range that included bonus and salary increases. The other ½ of the staff we addressed by providing special salary adjustments to make up for what we felt are inequities between merit compensation staff and bargaining unit comp therefore evening out the playing field among merit compensation staff. Due to the way CFO Carol Tipsord manages our budget and the gains we get periodically from hiring lags, etc., and provided there are no formal freeze on Merit Comp increases, we will try to address them in the coming year. We recognize and Director Vaught acknowledged that he recognizes that merit compensation staff--among the 500 or so that remain in the state--are disadvantaged by the furlough policy which falls at the agency level entirely on the Merit Comp staff. We are hoping there is some relief in the coming fiscal year. In this last year we addressed it in part by eliminating furlough days for 2, then merit comp attorney managers, to try to narrow the gap between them and those they manage; they are now bargaining unit employees. The same was done for the fiduciary manager, but he also has become a bargaining unit employee.

LEGAL PROGRAMS REPORT

John Wank

John Wank asked for Chairman Rotherth's involvement with him and Veronique Baker (Director, Legal Advocacy Service) to sign off on a letter to Judge Patrick McGann, Presiding Judge in the County Division in Cook County with regard to his administration of the mental health law docket. Chairman Rotherth and Mr. Wank had discussed the situation back in April. Some of the issues that were priority then have now become a bit aged and of less importance but there are a few new items since then which have been added to the list to be addressed.

Of primary concern is upholding the terms of the mental health code, which requires that hearings must occur within a mandated five (5) day period. Judge McGann has established an administrative process under which he has mandated status hearings which take place within a 5 day period, but don't appear to offer all of the same protections that the statutorily-mandated hearings provide. For example: the respondent or client may not attend the hearings, families are sometimes also allowed but they participate outside the actual venue where the status hearing takes place. On some occasions where responsive motions are brought that address the substance of the case the family is heard, but on other occasions they are not: and it seems to be at random whether the vestiges of the hearing process would be attached or not. Our LAS attorneys are confused: they don't know how to approach these matters and, more importantly, they think that the status hearing process offends basic due process and violates the clear terms of the statute.

Both Ms. Baker and Mr. Wank felt it necessary to write a letter bringing all of the agency's concerns to the Court before taking any more aggressive legal action requesting supervisory order in the Appellate Court or bringing a mandamus action either in the Appellate or Supreme Court.

Director Milano went on to further explain that there is a secondary issue: our ability to staff the schedule of hearings the Judge has established. Director Baker explained that often there can be hearings scheduled in 3 or 4 different locations--morning and afternoon--at different hospitals around Cook County. When it was explained that the agency doesn't have the manpower to be in 2 separate hospitals at 9:30AM and 1:30PM, the response from Judge McGann was that it needed to be figured out. What the Judge would like the agency to do is pull in attorneys from the Office of State Guardian as back up to the Legal Advocacy Service attorneys. The issue is that OSG attorneys are trained to handle guardianship matters; LAS attorneys are trained to handle mental health commitment and treatment cases.

Chairman Rotherth stated that he would be happy to be involved and would keep the Commissioners aware of the outcome.

FISCAL REPORT

Carol Tipsord

The current FY10 expenditures are at 86% of the budgeted GRF appropriation of \$8,873,300. Total expenditures to date are \$7, 580,000; the plan is to reserve and lapse approximately \$100,000 for FY10. Expenditures in the GAC fund for FY10 are \$61,100 to date; we have approximately \$40,000 cash balance in the GAC line. HB859, Amendment 6, covers our FY11 budget which was passed by the House and Senate and appropriates a 5% decrease from the FY10 GRF appropriation, resulting in \$8,429, 600. The FY11 budget will be in a lump sum appropriation and not broken down into line

items. The 5% decrease means we must request additional funding of about \$1.5 million of the special appropriation authority given to the Governor in HB859, Amendment 3. We need those monies to sustain operation of the agency for the coming fiscal year or it will mean we must lay off approx. 21 staff members no later than the end of October. During the Governor's Office of Management and Budget meeting, Director Vaught explained that decisions will be made regarding which agencies will receive the special emergency Governor's lump sum appropriation and he hopes that decisions will be made by the end of the calendar year: he wants it done before January 9, 2011. We hope we'll get a commitment from OMB no later than October so won't have to layoff agency employees. The AFCME contract will not allow us to lay off bargaining unit employees, so we must get some of those monies in order to sustain. Our current headcount is 113 staff; hearsay is that approx 5 employees plan to retire in FY11. Paying out sick and vacation time for those employees will cost the agency approx \$130,000 because some of those individuals have been with the State in excess of 25 years. Agencies were asked to prepare a 2 year headcount staffing plan with emphasis on decreasing the headcount. OMB said they would put a lot of emphasis on performance measures and how the agency's statistics show at the end of the year: they're going to say they want quality vs. quantity in terms of those measures. CFO Tipsord believes that due to the work of LAS Director Veronique Baker, HRA Director Teresa Parks and OSG Director Helen Godlewski we have come up with good performance measures and a good ability to show what the agency has done.

The fiduciary banking account has changed from National City Bank to PNC Bank effective June 15, 2010.

ACTION ITEMS

A motion to ratify minutes from December 8, 2009 meeting was made by Senator Harmon and Commissioner Wade seconded. The motion Carried.

A motion to ratify minutes from December 15, 2009 meeting was made by Commissioner Schleifer and Commissioner Wade seconded. The motion carried.

Human Rights Authority

As of January 1, 2010, legislation was made giving Agency Directors authority to approve items. Director Milano has approved all action items. For future meetings HRA items will be moved to the information section of the agenda.

A motion to ratify items was made by Commissioner Schleifer and Senator Harmon, seconded. The motion carried.

A motion was made to enter into closed session for discussion of Director's compensation and evaluation by Commissioner Schleifer and seconded by Commissioner Ryg. The motion carried and the Commission entered into closed session at 1:30 PM.

When the meeting returned to open session, Chairman Rothert stated that he and Vice Chairman Schleifer would be scheduling a meeting with Director Milano to discuss an evaluation process and setting up an evaluation process going forward. He pointed out that in the last page of the minutes from the December 8, 2009 meeting, it is indicated that the Commission requested items: formal job

description for the director as well as any CMS evaluation forms that are used for merit comp evaluations so a more objective evaluation process could be established. There was also a request for a red line copy of the Commission's policies; they received a CD with the Commission's policies, but there was a request for a red line copy to see how they've changed. John Wank stated that those materials were e-mailed to each Commissioner that requested the information, however, he would resend them to the Commissioners.

No votes were taken during closed session per Senator Harmon's advisement that without a quorum a vote cannot be taken, even advisory votes. Discussion then centered on making a concerted effort to be more pro-active in obtaining a quorum. Thus far e-mails and phone calls have emphasized the need for attendance in order to obtain a quorum. Commissioner Ryg offered to draft a note to the Commissioners.

PROGRAM REPORTS

Office of the State Guardian Helen Godlewski

OSG currently has 4800 wards statewide; case loads are approximately 127 wards per caseworker which is among the highest in the country at nearly 3 times national average.

There are 5 guardianship representatives on extended medical and family leave; resulting in the reassignment of 550 wards to other staff in those regions and neighboring regions: Director Godlewski also is carrying a case load of 150 wards in the near Western suburbs. There are staff vacancies in the West Suburban, Metro East and Egyptian regions, well as 2 clerical positions in the Rockford and Alton regions. There is a Guardianship Regional Administrator position in East Central region that has been unfilled for 4 years: all of the day-to-day management responsibilities have fallen on William Scheidemantel who is the managing attorney and also responsible for all legal work in the Egyptian and East Central regions, covering about 51 counties throughout Illinois. The other complicating issue is that that region has also received a large number of state appointments because of a large number of vacancies in the county Public Guardian system. Mr. Scheidemantel is also moving into the bargaining unit.

In a final update on the Howe Developmental Center in Tinley Park; as of the timing of the meeting, the agency has only 3 wards remaining at that facility. All 3 will be moving into CILA's: the vast majority of our wards moved into CILA's and group homes. Three years ago we had about 75 wards at Howe and now we're down to the final 3. Twenty-one (21) wards were transferred to other state operated facilities due to their behavioral health issues. Director Godlewski commends Jennifer Miller, Joyce Ebster and Laura Sakas for their continued work on the transition process. There is a meeting scheduled in the following week with Ann Shannon from the Governor's office to recap and review the transition process and its impact on our wards.

In April many of the program staff had the opportunity to attend the National Guardianship Association's Colloquium that was held in Chicago. John Wank and OSG attorney Madeline Sharko were invited to be presenters at the upcoming national conference which will be held in Hershey, PA: the agency does not cover travel expenses for these conferences; it is all out of pocket. We also hosted 3 certification exams in Chicago, Carbondale and Springfield. In addition to our new hires, a number of Public Guardians attended those certification events so they will be in compliance with

the new law that requires that certification. We will host a few more events in Chicago and Springfield in September in addition to staff training for continuing education units.

Commissioner Schleifer inquired as to whether the personnel vacancies in existence are due to funding. Director Godlewski stated there have been a lot of funding issues: when OSG managers entered into the bargaining unit they are now entitled to overtime pay for any on-call responsibilities and they rotate the on-call schedule. It is equal approximately to 3 staff positions to pay the overtime. Commissioner Schleifer asked if it wasn't more sensible to hire people to perform those duties to reallocate rather than pay the overtime, to hire another shift to handle on-call. Director Godlewski said we cover about 125 hours per week and would need at least 3-4 new positions to cover the hours. We would need to create a new job title, new position classification which would likely be bargaining unit positions, which would still result in paying overtime, shift change, differentials, etc. Director Milano also stated we have an ongoing grievance with respect to on call because we have attempted to staff wherever possible with Executive Staff, not merely because of cost but because some issues, managerial and discretionary, that need to be handled by persons at a higher level and they are compensated by comp time. The bargaining unit people have said that's taking bargaining unit work away and are now in the stage where CMS is going into arbitration with the bargaining unit; however, we are not allowed to participate in the arbitration to express any rationale. John Wank explained that for 25 years on-call was handled only by management staff and they didn't receive monetary compensation, but a day or 2 of comp time. When a state unit of government sets out to establish a compensation scheme for work such as on-call, it's dictated by what CMS negotiates with the union.

Commissioner Ryg asked Director Godlewski her impression about the Howe transition process. She stated that it was a good outcome; there was a lot of controversy early in the process, there was a lot of negative input from the families, but once they embraced it, understood it and had an opportunity to visit some of the group homes it turned out to be a good situation. Some of the provider fairs could have happened earlier so the families and guardians could see what was available and do some site visits which would have been helpful. John Wank mentioned a report written by Equip for Equality concerning deaths related to people transitioning from Howe to community based placements and wondered if OSG had any bad stories. OSG did have a few deaths which were not unexpected because those were elderly individuals whose health was failing and also those wards weren't transitioned to group homes or other state operated facilities, but were sent to nursing homes or long term placements.

Chairman Rothert stated that he'd received a letter from the Office of the Executive Inspector General about a complaint they'd received filed against the Commission, Director Milano, himself and each of the Commissioners. They're (OIG) closing their case and have referred it to us to look into; we only have to let them know if what is alleged is wide spread or different than originally reported regarding ward Odessa Mills. Ms. Godlewski stated that the matter had been fully looked into and no misconduct was found.

HUMAN RIGHT AUTHORITY Teresa Parks

The HRA was able to hire Mr. Gene Seaman to fill a vacant position as coordinator in the Peoria region. Mr. Seaman comes to the authority with experience in volunteerism, writing and marketing.

The program has 12 HRA member vacancies across the state and will be working with Danielle Welliver on recruitment efforts.

Statistics indicate that the authority is on target for handling as many, if not more, cases this fiscal year than in the prior fiscal year. Past trends remain the same with mental health cases representing the most frequent issue encountered. The top 3 rights issues we are involved in include rights issues associated with treatment and program; admission, discharge and transfer practices and rights associated with medication administration—most often that means emergency medication or forced medication.

There HRA is having ongoing communication with the IL Department of Human Services and IL Department of Public health concerning DD Homes Network. We have had 2 past enforcement referrals (Emma Place and Pine Terrace) concerning liability waivers and visitation rights. We've never felt that these issues have been completely resolved. Human Services and Public Health are interested, they've heard our story, listened to it and in one instance DHS contacted the corporate owner and asked that the liability waiver be modified if not done away with; however he has not done anything about that. Public Health has agreed to at least look at the visitation issue at Pine Terrace because they are going in there regularly on other problems. So even though we haven't reached a resolution on those past enforcement referrals, we are engaging in ongoing communication with Department of Public Health and Department of Human Services and have reached an agreement that we will send any reports involving this provider to Public Health and Human Services when we close a case for informational purposes so they can track the situation from then on. In the meantime we continue to get new complaints concerning facilities run by this provider, the underlying theme being they use blanket approaches with regard to services to their residents instead of individualized approaches as required by the mental health code. Most recently cases with this provider have resulted in no response or they are in total disagreement with the HRA. We anticipate more enforcement referrals involving this provider.

Jon Burnet, one of the managers who works out of the Rockford office, has been serving along with Director Milano on an abuse task force working specifically with a subcommittee addressing issues concerning a hotline, a registry and the mandated reporting act.

Chairman Rothert asked about the ongoing State Board of Education issue, Ms. Parks said there is an additional case involving the same school with similar special education concerns as the original case involving the same student. We ended up going back to the school. Even though they didn't respond in writing, when the HRA went back on the follow-up, we found that the school had taken care of the concerns we had in the original findings report. They didn't respond to the second report in the newer case. The letter from the State Board of Education questioned accepting an enforcement referral from the Commission. We responded that we felt it was appropriate, cited our mandate that allowed us to make the enforcement referrals and invited them to engage in discussion about it and that is the last we have heard from them. John Wank stated that he had heard from the Governor's General Council's office that there was interest in having a sit down with the State Boards, the General Council, and himself; however, the woman that proposed the sit down is no longer with Governor Quinn's General Council office. She is now a staff attorney at the Department of Children and Family Services. He is not sure if her successor is interested in conducting such a meeting.

LEGAL ADVOCACY SERVICE Veronique Baker

Patti Werner has left the agency; she has gone on to be a hearing officer for the IL Department of Unemployment Security. It was a great loss for the agency because she was a great advocate for clients, very knowledgeable and instrumental in getting a lot of key appellate decisions through this year. Even before Ms. Werner's departure from LAS, Cook County was overwhelmed with the new implementation of mental health court. Judge McGann started on a gradual basis with the Tinley Park call, which only involved 3 or 4 hospitals. The idea was that he would gradually implement changes throughout the county; however, sometime in March he decided he would do everyone all at once. This resulted in the 30 hospitals or so filing petitions in Cook County and they were each assigned a date for hearing; there could be anywhere from 5 or 6 hospitals per day. Each attorney in the Cook County area is handling approximately 70 petitions per month; the prep work is enormous. Attorneys are spending a lot of time visiting hospitals interviewing clients. In the past all the hearings would be held at Reed, Madden and Tinley Park: the change is that now all the cases are held in the individual hospitals. Ms. Baker pointed out to the Judge that this would be fine in smaller counties where there are fewer hospitals, but where there are 30 or so hospitals attorneys still have to visit their clients, review charts and talk to all the parties involved. As a result LAS attorneys in Cook County are overwhelmed, feeling they aren't giving their best effort and it has had an effect on the appellate process. It is difficult to assign appellate cases to attorneys when they may have to prepare for 3 hearings in the coming week and they don't have a lot of time to do the writing and research to prepare for appellate cases that are equally as important as the trial work.

Ms. Baker has contacted Public Interest Law Initiative and the Public Interest Law Initiative Fellows programs. They have a delayed entry program for attorneys who were to enter major law firms but there positions were delayed for a year or so. Hopefully between the 2 programs we will find some attorneys who are interested in appellate work, trial work and an opportunity to assist with the enormous case loads in Cook County. Hopefully hiring a new attorney will alleviate some pressure also. Patti Werner had a very high concentration of Lee Wesley cases; those are the children in DCFS custody who also have mental illness that are sometimes hospitalized. What Director Baker has noticed since taking over that aspect of her caseload is that there are a disturbing number of rights restriction notifications filed against certain people. She will be working with the HRA documenting the two or three people that seem to be under rights restriction all day, everyday. It isn't clear if it is a matter that they need to be restricted all day, everyday or if it is a lack of training or a combination of both. She and Teresa Parks will be contacting Maryville to see if they can find out what's happening. Patti admitted that they received a lot of those notifications, but with the recent changes in Cook County they just haven't had the time to follow up.

There has been an increase in hearings in Cook County. One of Judge McGann's goals in changing the way he dealt with mental health court was to have more hearings. For April 2010 there were 32 commitment hearings state wide, an increase of about 10 or 11 from the previous month which is most likely directly due to the number of hearings that are held in Cook County. The hospitals are finding it easier to go through with the process because they don't have to go anywhere. It has resulted in an increase in hearings and an overwhelming caseload for the LAS attorneys. Hospitals that would not normally take cases to hearing because it would require them to bring the patient accompanied by the doctor and a social worker now are finding it easy because they are on the premises. Hospitals would either discharge the patient, the patient would sign in voluntarily or they would start taking their medications, negating the need for a hearing. We have also noticed an

increase in petition filed by the VA hospitals. In the past they would only take people on a voluntary basis. The State's attorney now will go ahead on defective petitions; where in the past they would not. They would leave it up to us to file the petition to dismiss: sometimes it's granted, a lot of times it's not.

Chairman Rothert asked if the recent changes in statutes allowing teleconferencing for commitment hearings would help with the situation. Director Baker said the bill did pass for doctors to testify via teleconferencing. She isn't sure if it will affect Cook County. The idea behind the statute was to address the instances when doctors aren't in close proximity to where court was being held; allowing doctors to testify remotely therefore allowing the process to go forward without the doctor travelling a long way to the courthouse. The statute probably will not affect things in Cook County because now the hearings are held in the hospital so the doctor just walks down the hallway. Some LAS attorneys have expressed a problem with court being held remotely. A suggestion that came through Cook County is that they would have court at the courthouse, but the client would remain at the hospital: we would need to have an attorney at the hospital questioning clients or the doctor, as well as an attorney at the courthouse dealing with whatever matters there. There was concern about the introduction of evidence and just the idea of the cost associated in setting up that system; who would bear the cost and the upkeep. Not to mention some clients are concerned about not being in a real courtroom.

Vice Chairman Schleifer asked if in addition to having communication with Judge McGann, had there been any communication with Judge Evans. Ms. Baker responded there was a letter from Director Milano addressing our concerns about the staffing and changes in mental health court and Judge Evans was copied on that letter. Other than that there's not been an effort to engage Judge Evans. Director Milano said that there was some discussion about engaging Judge Evans, but it was decided that unless the situation became totally unbearable that communicating above Judge McGann could result in more adverse circumstances for the LAS attorneys on a regular basis than any good that would be achieved. Commissioner Schleifer felt that it may bear further discussion: there are also sheriffs, court personnel, clerks, and court reporters etc. that are affected by the change. Chairman Rothert asked if court reporters, bailiffs, etc were going to the hospital hearings. Director Baker said that was the initial delay in the implementation of his administrative order; he had not considered the fact that the court reporters and sheriff's department were part of the bargaining unit and required a certain amount of notice as to where their assignments would be and that was something that had to be dealt with. The court reporters wrote a letter to Judge Evans expressing their concern about being dispatched to various parts of the county with their expensive equipment, not knowing where they're going to be assigned and many times their notice was less than 24 hours. With the exception of one or two occasions, there have been court reporters, clerks and deputies at the hospital hearings.

Not having any further business, a motion was made to adjourn by Vice Chairman Schleifer and was seconded by Commissioner Wade. The motion carried.

The meeting was adjourned at 2:59.