SANDBERGPHOENIX
& VON GONTARD P.C.

W. Wylie Blair
Shareholder

600 Washington Avenue - 15th Floor
St. Louis, MO 63101-1313
Tel: 314.446.4202
Fax: 314.241.7604
wblair@sandbergphoenix.com
www.sandbergphoenix.com

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HEALTH FACILITIES &
SERVICES REVIEW BOARD

October 14, 2013

Via Certified USPS Mail, Return Receipt Requested
Mr. Mike Constantino, Supervisor
Project Review Section
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: Project #13-058
Scheduled Board Meeting of November 5, 2013

Dear Mr. Constantino:

I am writing you in accordance with the directive of the panel at the Illinois Health Facilities and Services Review Board hearing that took place on October 9, 2013, in Centralia, Illinois, concerning the closure of Murray Center pursuant Project #13-058. Specifically, I was advised to put my oral request for postponement of the Board's vote on the project in writing.

I am counsel for Petitioners in the matter of *Friends for Murray Center, Inc., et al. v. Illinois Department of Human Services, et al.*, Clinton County, Illinois, Cause No. 13-CH-49 (hereinafter "State Action"). There is also a matter brought in the United States District Court for the Northern District of Illinois, Eastern Division, styled *Illinois League of Advocates for the Developmentally Disabled, et al. v. Illinois Department of Human Services, et al.,* Cause No. 13-C-1300, pending before Judge Marvin Aspen (hereinafter "Federal Action").

In the Federal Action Judge Aspen entered a Temporary Restraining Order (TRO) effective May 30, 2013, precluding transfer, discharge, or overnight transition visits from Murray Center without the written consent of the resident's legal guardian. (See Temporary Restraining Order, attached as Exhibit A). That Order remains in effect pending hearing on Plaintiffs' Motion for Preliminary Injunction set for January 6, 2014. (See Order setting hearing of January

6, 2014, attached as Exhibit B). Accordingly, Murray Center will not close on the November 30, 2013, projected closure date.

In the State Action, Attorney Stewart Freeman has been appointed Guardian *Ad Litem* over 24 wards that had been subject to guardianship of the Office of State Guardian. Mr. Freeman is charged with investigation as to whether transfer of the wards out of Murray Center is in their best interests. His preliminary findings have uncovered shocking conditions in CILAs in which his wards are currently residing on "pre-transition visits." (See Declaration of Stewart Freeman, attached as Exhibit C). Mr. Freeman's investigation is ongoing and his findings are not complete.

There is no urgency to the Board voting on Project #13-058 in light of the fact Murray Center cannot close during the pendency of the TRO. The undersigned urges the Board to take the vote off of its agenda for the November 5, 2013, meeting so that Mr. Freeman can complete his investigation and the Board can be fully apprised of his findings before voting on whether Murray Center can close. Certainly the Board has an interest in being fully informed before voting on a Project wherein life and limb of the developmentally disabled are at stake. There will be no hardship caused by postponing the vote since Murray Center cannot close. Moreover, Judge Aspen may relieve the Board of the need to make a decision on Project #13-058. There is no benefit to taking a vote that will be rendered moot if and when Judge Aspen enters a Preliminary and, ultimately, Permanent Injunction. Notably, his ruling granting a TRO already recognizes Plaintiffs are likely to succeed on the merits of their claim for Preliminary Injunction.

Should you have any questions or if you would like additional information, please do not hesitate to contact me.

Very truly yours,

W. Wylie Blair

WWB/slg

cc: Judith Sherwin, counsel for Plaintiffs in the Federal Action

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ILLINOIS LEAGUE OF ADVOCATES FOR THE DEVELOPMENTALLY, DISABLED, *et al.*	)	
Plaintiffs,	)	Case No. 13 C 1300
v.	)	Judge Marvin E. Aspen
ILLINOIS DEPARTMENT OF HUMAN SERVICES, MICHELLE R.B. SADDLER, in her official capacity as Secretary of the Illinois Department of Human Services, KEVIN CASEY, in his official capacity as Director of Developmental Disabilities of the Illinois Department of Human Resources, and COMMUNITY RESOURCE ALLIANCE,	)	
Defendants.	)	

Temporary Restraining ORDER

MARVIN E. ASPEN, District Court Judge:

On May 30, 2013, we granted Plaintiffs' motion for a temporary restraining order ("TRO"). (Dkt. No. 58.) After a conference with the parties to address their respective concerns as to the language of the TRO, and having considered and address those concerns, we hereby order:

A. The Defendants shall not transfer, discharge, or send on any overnight transition visit any resident of the Murray Developmental Center ("Murray") without the written consent of the resident's legal guardian. This provision will remain in

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effect until we rule on the pending motion for preliminary injunction. (Dkt. No. 58.)

B. Nothing in this order shall restrict or prohibit Defendants from providing the residents with outside medical care when necessary, following Murray's standard protocols and procedures for obtaining such care for a resident. Defendants shall not prevent the resident from returning to Murray forthwith after receiving such necessary medical care.

C. Nothing in this order shall restrict or prohibit Defendants from conducting any pre-transition assessments, evaluations, or any other planning activities that do not involve removing a resident from Murray without the consent of the resident's legal guardian.

D. The parties shall exchange their evidentiary direct examination affidavits on or before July 17, 2013. Any witnesses whose affidavit is submitted thereby shall be available for cross-examination and redirect at the preliminary injunction hearing.

E. The parties shall designate which opposing party's witnesses they will cross-examine on or before July 19, 2013.

F. The preliminary injunction hearing shall commence on 7/23/13 at 10:00 a.m.

Marvin E. Aspen

Honorable Marvin E. Aspen
U.S. District Court Judge

Date: June 12, 2013

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1
Eastern Division

Illinois League of Advocates for the Developmentally Disabled, et al.

Plaintiff,

v.

Case No.: 1:13–cv–01300
Honorable Marvin E. Aspen

Illinois Department of Human Services, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, October 7, 2013:

MINUTE entry before Honorable Marvin E. Aspen: The preliminary injunction hearing set for November 4, 2013 is stricken and reset to Monday, January 6, 2014 at 10:00 a.m. The conference currently scheduled for Thursday, October 10, 2013 at 11 a.m. stands.(gl,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION

ILLINOIS LEAGUE OF ADVOCATES FOR THE DEVELOPMENTALLY DISABLED, *et al.*, ***Plaintiffs,***	Case No. 13 C 01300
vs.	Hon. Marvin E. Aspen
LLINOIS DEPARTMENT OF HUMAN SERVICES, *et al.*, ***Defendants.***	Magistrate Judge Daniel G. Martin

SUMMARY OF STEWART FREEMAN AFFIDAVIT

Stewart is currently the Public Defender for Clinton County, Ill., and has been appointed by a state court judge as the guardian *ad litem* for the OSG wards. He has authority with respect to whether the OSG wards should be transferred. He documents the difficulty in receiving records of his clients from DHS/Defendants who have tried to limit his access. He has ascertained that several of the wards are on "pre-transitional visits," which are in actuality, complete moves from Murray without the full transfer paperwork.

Mr. Freeman testifies that at least two of his clients should be returned to Murray. He made unannounced visits of the group homes, and does not have a high opinion of the care for the residents. He documents problems at the homes, including: inadequate security, inadequate staffing (long day and hour shifts), lack of staffing experience, lack of supplies and home supports (fireproofing, padding, bedding, *etc.*), unsafe conditions (exposed hazards), lack of knowledge as to client care, low pay, little training and little to no decoration or personalization for the residents. He believes that some of his clients never should have been placed in a community placement. He documents his interviews with three former group home employees (whose provider had received Murray residents), who discussed all of the problems associated with the group home placements. Mr. Freeman fears the consequences that could happen if these conditions continue, especially after scrutiny of the facilities has passed.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ILLINOIS LEAGUE OF ADVOCATES FOR THE DEVELOPMENTALLY DISABLED, *et al.* ***Plaintiffs,*** vs. **ILLINOIS DEPARTMENT OF HUMAN SERVICES, MICHELLE R.B. SADDLER,** *in her official capacity as Secretary of the Illinois Department of Human Services,* **KEVIN CASEY,** *in his official capacity as Director of Developmental Disabilities of the Illinois Department of Human Resources,* and **COMMUNITY RESOURCE ALLIANCE,** ***Defendants.***	Case No. 13 C 01300 Hon. Marvin E. Aspen D

DECLARATION OF STEWART FREEMAN

1. I have personal knowledge of the facts of this declaration and could competently testify under oath to those facts if called upon to do so.

Background

2. I received my B.A. in History and Political Science from the University of Illinois. I received my J.D. from Creighton University in 1993.

3. I served as an Assistant State's Attorney for the Marion County State's Attorney's Office from 1993 through 2004. I went into private practice for a year in 2004 , and then became the Assistant State's Attorney of Clinton County in 2005. I became full time Public Defender for Clinton County, Illinois in 2008, in which I have served since then.

4. I have no personal or family connections with the Murray Developmental Center ("MDC"), any of its current residents, or any of the named Plaintiffs.

Appointment as Guardian ad Litem

5. On July 29, 2013, I was appointed to act as Guardian ad Litem on behalf of 24 wards of the Office of the State Guardian. I was not given full authority to supplant the OSG's role, but only with respect to decisions of whether my clients should be transferred to homes and/or institutions other than MDC.

6. Shortly after my appointment on July 29, 2013, I requested a list of my clients from the Illinois Attorney General's Office. I only received the list of my clients on August 14, 2013, eighteen days after my appointment. The Attorney General's office took the position that 14 of my wards were not my wards because they no longer were residents of the Murray Center since they were on pre-transitional visits. The State Court judge disagreed on August 8, 2013 and after repeated requests the Attorney General's office gave me a list of my clients late on August 13, 2013. I have requested medical information about my clients in a subpoena duces tecum, however, the Attorney General's Office has tried to limit my access to my clients records and who I speak to about my clients by demanding a protective order. They have refused to provide any information from their office unless this protective order is entered.

7. Currently I have received reports directly from social workers at the MDC called Individual Support Plans (ISP) and addendums to a number of the ISPs and one CRA report. The CRA report is a report from the organization hired by DHS to help with the movement of wards from the MDC. ISPs are reports provided by workers at the MDC regarding all aspects of my wards lives and most are dated to earlier this year and late last year.

8. Currently, ten of my clients reside at MDC. Fourteen of my clients are on pre-transitional visits to other 2 to 4 bed homes called CILA (Community Integrated Living Arrangements). Some of my clients have been on "pre-transitional" visits since early May and others for several months now, even though such visits usually last a short period of time. These

pre-transitional visits therefore are, in actuality, moves from the MDC without the full transfer paperwork. Murray Center workers and myself have been told that once discharges form the MDC are finalized the discharges are to be "back dated" to the original pre-transitional date for payment purposes.

9. Based on my review of their files, I have determined that at least two to three of my clients who are currently living in group homes in the community should be returned immediately to MDC, based upon their needs and the conditions in CILAs. I have spoken to the PAS agent in charge of these moves on September 17, 2013 and she has asked me to hold off on filing any motions to return clients until she can provide me with more information.

Inspection of the CILAs

10. As it is my responsibility to inspect the conditions under which my clients are living to determine whether it is an appropriate fit, I have conducted several unannounced visits of CILAs in the Centralia and Mt. Vernon, Illinois area where my clients are currently residing.

11. Based upon what I have discovered to date, I do not have a high opinion of the CILAs and their ability to care for my medically fragile clients and clients with behavioral issues.

Rescare/CAIL CILA at___ 3rd in Mt. Vernon, Illinois

12. I inspected this CILA on August 27, 2013. My inspection revealed the following concerns: (1) the front door was not locked, even though one of my clients was an elopement risk, and a major road is only a half a block away from the CILA, (2) one of the employees admitted she was working her sixth 12 hour day in a row, (3) one of the employees had 2 and ½ months of experience at the CILA, but the other only had 3 weeks experience, (4) one of my clients who had PICA had denim bed sheets rather than the appropriate tear resistant sheets, (5)

one client who had a history of self-injurious behavior ("SIB") did not have adequate padding in his bed and in other common areas of the home, (6) the staff did not know where the fire extinguisher was when asked, (7) the cleaning materials were in open access to the residents, (8) the staff had no idea what a medication log was, and did not provide me with one (9), there was not an appropriate biohazard disposal receptacle, (10) the staff seemed ignorant of my client's dietary concerns stating whoever is on duty decides what we eat , (11) the CILA had been opened in May 2013 and the rate of pay of the employees was less than ($9.00 / hr.), (12) the staff working that day appeared to have little or no training in that one of the workers could not turn on the light in my clients bedroom, (13) all bedrooms and the facility in general had little or no decoration or personalization.

Rescare/CAIL CILA at __ Ridge St., in Centralia, Illinois

13. I inspected this CILA on August 27, 2013. My inspection revealed the following concerns: (1) a workman was working with power tools outside the residence and had left timbers with exposed nails in a vacant room in the CILA during my visit, (2) there was not an appropriate biohazard disposal receptacle, (3) the medications were kept in an unlocked location accessible to one of my clients, (4) again the staff consisted of a person with months of experience and the other person stated she worked there for 3 weeks, and (5) the staff did not know right away where the fire extinguisher was when asked, (6) there was little to no decoration or personalization of the facility.

14. One of my clients at this home has a history of SIB. She wheel chair bound and is required to wear mittens on her hands at all times because she will try to induce vomiting. She is also in need of a feeding tube and specialized prescribed nutrition through this tube. I am deeply concerned with placing clients like this client in a CILA, because they could easily be abused

and no one would know. I also believe that she will never be integrated in the community and should not have even been placed in a community placement.

Support Systems____ 4th St. , Centralia, Illinois

15. I inspected this CILA on September 9, 2013. My inspection revealed the following concerns: (1) I spoke to a female worker who confirmed that my client at this CILA was not given the proper medications for seizures for three days. After the medication ran out, and as a consequence, my client had a seizure which resulted in a hospitalization (the client had not had a seizure for three years while housed at the MDC according to his ISP report) The worker stated that there was a problem getting the prescribed medication because of problems with a Medicaid/ Medicare card ; (2) again three workers were present at the facility making around $9.00 per hour and with a combined experience level of 4 months experience for the three workers combined, (3) there was not an appropriate biohazard disposal receptacle, (4) the refrigerator was stocked with high sodium food that was not appropriate for one of my client's low sodium diets.

16. I have inspected a total of 6 different CILAs in the Mt. Vernon and Centralia areas and I tried to inspect one other CILA in the Centralia area, but no one was present during that occasion.

CILA Employees

17. Two Rescare/CAIL ex-employees came to my office to discuss their working conditions on August 22, 2013: Rhonda Gibson and Dylan Altom. Rhonda Gibson was familiar to me in that she was prosecuted for Burglary in Marion County case #89-CF-219. Dylan Altom, since I interviewed him, has been charged with physically abusing a disabled person housed in a

prior facility to his work at the CAIL CILAs. He has a class 3 felony now pending in Marion County case # 2013-CF-235.

18. Ms. Gibson informed me that she has spent her own money to purchase personal and household items for residents because it was so difficult to obtain these items from her boss Ronda Harris. She provided me with receipts of items she said were for residents. She stated that on a number of occasions one of the CAIL CILAS would transfer their residents to other facilities for 6- 12 hours because the facility did not have appropriate staffing. She went on to state that the scheduling of workers was left to the last minute and she would have to work double shifts to cover working two 12 hour shifts. She stated that at one point she worked 38 days straight and was "literally delirious" while working shifts at the end and had an emotional breakdown. She then showed me paystubs indicating that she had worked 140, 150 and even over 180 hours over a two week period. She continued that the only way they stopped scheduling her for work was to cry and breakdown in front of Ms. Harris to get a day off. Ms. Gibson went on to state that the client that needed a feeding tube at the Ridge Street CAIL facility ran out of the prescribed feeding tube nutrition required at one point and she went to a store and fed my client Ensure for a few days rather than the doctor prescribed nutrition.

19. Mr. Alton indicated that he worked at one point for 36 days straight. Mr. Altom had been terminated from a prior care facility for individuals with developmental disabilities amid allegations that he had abused, as his charges as the felony charges attest.

20. Both ex-employees describe working at the facilities as chaotic .

21. I spoke to Rhonda Harris the person in charge of all of the CAIL facilities in the Centralia and Mt. Vernon area and she states that the ex-employees are just disgruntled workers

who are being put up to making allegations by bigger facility competitors who she stated had hired Ms. Gibson.

22. Based on what I have seen during the course of my inspections, I have concerns about the placement and welfare of my wards that are unable to communicate and have such severe disabilities that they are vulnerable to abuse or neglect. If the conditions I have seen and heard about exist now, what will happen to my wards 2, 3, 5 years from now after the scrutiny of the facilities has passed. I fear that severe abuse and maybe even a possible premature death could occur in the future if inadequate oversight is not maintained.

23. I swear under penalty of perjury that the statements in this declaration are true and correct.

DATED: 9-23-13

Stewart Freeman

Sworn to and signed before me on 9-23-13.

Jeanna R. Spitler

Notary

"OFFICIAL SEAL"
JEANNA R. SPITLER
Notary Public, State of Illinois
My commission expires 6/11/2015