

THE WORK

Sonnenschein Secures Pro Bono Class Action Victory for Disabled Clients

Posted by Brian Baxter

Represented by a team of lawyers from **Sonnenschein Nath & Rosenthal** and several nonprofits, a class of 6,600 developmentally disabled residents of state-owned facilities in Illinois will now be able to choose their own living arrangements thanks to a November 13 consent decree filed in U.S. district court in Chicago.

The settlement is expected to bring Illinois in line with a national movement toward improving care for developmentally disabled citizens by shifting them from large residential institutions and into smaller community-based facilities.

Illinois's failure to join that trend prompted seven name plaintiffs to file suit against the state in July 2005. Sonnenschein-through litigation partners **John Grossbart**, **Wendy Enerson**, **Kendra Hartman**, and associate **Corey Shapiro**-served as pro bono cocounsel for the class and helped to push the case through three years of depositions and discovery.

"More than 10,000 people will clearly benefit from this [agreement]," says Grossbart, noting that in addition to those 6,600 already in state-funded facilities, many more await care. "Many parents with disabled children are forced to place them in state-financed facilities as they grow older."

Grossbart, who has experience with large class actions, says that he was looking for a pro bono matter to involve the firm in several years ago when the legal staff of Chicago-based Equip for Equality, a nonprofit that advocates on behalf of the disabled, approached him.

"They educated me on how Illinois has been terribly backward in dealing with the disabled, especially in terms of being out of compliance with federal law and the [Americans with Disabilities Act]," Grossbart says. "And because of their role as an advocacy group and legal aid organization, they knew people who might be good name plaintiffs for us."

Assisted by Equip for Equality legal advocacy director Barry Taylor, managing attorney Laura Miller, and senior attorneys Barry Lowy and John Whitcomb, Sonnenschein provided the legal resources necessary to pursue the case. (Additional pro bono counsel was supplied by Kenneth Walden and Edward Mullen III of Access Living, Benjamin Wolf of the American Civil Liberties Union, and Judith Gran of the Public Interest Law Center of Philadelphia's Disability Rights Project.)

Grossbart says that the American Association of Mental Retardation has ranked Illinois dead last among the 50 states and the District of Columbia in serving developmentally disabled individuals. Part of the problem, he says, was political.

Illinois pays for roughly 240 intermediate-care facilities for the developmentally disabled (ICFDDs). In addition to a few state-operated institutions, most are privately run and financed by

Medicaid. All generally employ unionized workers, who, Grossbart says, have used their political clout to preserve the status quo.

With the case headed for trial on October 20, though, settlement discussions began to pick up. The two sides asked for a postponement to pursue negotiations and Chief Judge James Holderman granted a one-month reprieve.

In the end, Grossbart says, the plaintiffs were successful in winning most of the what they sought. In part, that was because he had several experts set to testify at trial; the state, he says, had none. During discovery, plaintiffs also obtained damning e-mails from the various states agencies responsible for serving disabled individuals.

Illinois assistant chief deputy attorney general Brent Stratton handled the case for the state. Illinois Governor Rod Blagojevich's office was advised by Kerry Peck of Chicago's Peck, Bloom, Austriaco & Koenig. (Peck serves on the board of directors of The Center for Disability and Elder Law.)

According to the consent decree, which must be approved by Judge Holderman, institutionalized individuals will undergo evaluations to gauge their desire for moving to different facilities. A "meaningful choice," will be provided to those individuals, Grossbart says, should they or their relatives desire a move.

Plaintiffs counsel and the state both agree to work with a court-appointed monitor to carry out the consent decree's provisions. In addition, the decree calls for Illinois to pay plaintiffs attorneys fees and expenses--roughly \$2.5 million, Grossbart says--that Sonnenschein plans to donate to Equip for Equality so it can continue its mission of helping those it serves move toward the mainstream.

"I don't want to speak for every single one of [the plaintiffs], but they are able," Grossbart adds. "They deserve to live in community settings, take a bus, or hold a job. The things we take for granted were all stripped away from them in these forced institutional settings."

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