

**STATEMENT OF DAVID A. SINGER ON BEHALF OF THE MOHONK
CHILDREN'S SERVICES AND HIMSELF AND THEIR CLAIM AGAINST THE
STATE DEPARTMENT OF CHILDREN AND FAMILIES**

FEBRUARY 5, 2007

I would like to ask the Judiciary Committee to review the circumstances that resulted in our pursuit of a formal claim against the Department of Children and Families. We are not asking for financial remuneration. Rather, we are asking for the State Department of Children and Families (DCF) to simply abide by a contractual agreement that they signed. We are hoping that fair and reasonable consideration can be made of our claim.

The Claims Commissioner, however, did not, in fact, review the merits of our case because the respondents, the Department of Children and Families (DCF), claimed that we filed our suit beyond the Statute of Limitations. The Claims Commissioner agreed (Attachment A). We would like this reconsidered and have additional pertinent information that has bearing on this decision.

Alternatively, as described in Connecticut State Statute 4-148b, we would also like to ask the Judiciary Committee to consider the context and background of Mohonk's efforts and my exhaustive efforts to help children in Connecticut over the past 25 years. Your decision would renew or end what we have dedicated our life to, the Mohonk Children's Home.

STATUTE OF LIMITATIONS

I believe that the Claims Commissioner reached the conclusion that we exceeded the Statute of Limitations based upon incorrect information and insufficient information.

Connecticut Statute 4-148a states the following:

Sec. 4-148. Limitation on presentation of claim. Exception. (a)
Except as provided in subsection (b) of this section, no claim shall be presented under this chapter but within one year after it accrues. Claims for injury to person or damage to property shall be deemed to accrue on the date when the damage or injury is sustained or discovered or in the exercise of reasonable care should have been discovered, provided no claim shall be presented more than three years from the date of the act or event complained of.

(b) The General Assembly may, by special act, authorize a person to present a claim to the Claims Commissioner after the time limitations set forth in subsection (a) of this section have expired if it deems such

authorization to be just and equitable and makes an express finding that such authorization is supported by compelling equitable circumstances and would serve a public purpose. Such finding shall not be subject to review by the Superior Court.

DETERMINATION OF ACCRUAL DATE

The Claims Commissioner bases the date that the Mohonk Children's Home claimed that we "sustained damage or injury or discovered or in the exercise of reasonable care should have been discovered" on a letter that I wrote to the DCF Bureau Chief, Gary Blau, on July 29, 2002. I have attached this letter (Attachment B).

This letter was written by me personally, not by our attorney and not by our Board of Directors. It had no official or legal merit. More significantly, this letter did not even state that I was convinced that DCF had violated their agreement. The most dramatic statement was that "I think DCF has violated the terms of our agreement, specifically Item #3..." I added that "I would not," in fact, "like to," sue DCF even if a case could be made for it, and I concluded with the statement that "my prayer is that DCF can become inspired enough to look for solutions..." I was asking for Gary Blau's advice and help. Although I am not an attorney, in my searches, I could not find a precedent case that supported the determination of an accrual date based upon a personal letter sent unofficially by an individual that did not even make a definitive statement of harm. I did not even sign this letter as an employee of the Mohonk Children's Home since I was not employed by them at that time. The Claims commissioner was not aware of this. Second, the Claims Commissioner relates notes from a telephone conversation kept by Gary Blau on August 21, 2002 that indicated to him (Blau) that I was "considering a suit." I could not consider a suit on behalf of Mohonk, and in no telephone conversation was that the context of any call that I had with DCF. The Claims Commissioner could not site the 9 conversations that I had with Gary Blau and others in DCF that requested meetings so that "I could understand how to work with DCF within the meaning and intent of our agreement." I believe that the Claims Commissioner was not provided with notes of these telephone conversations, and I believe that he must not have been provided with my September 5, 2002 follow up letter to DCF that stated, "I would like to get this off the fence post and move on. So I would like to ask for your help with this concern as you suggested in your letter." I expected that this would reach an amicable conclusion. A suit was not intended or stated as an appropriate solution to our misunderstandings. No statement of "breach" was ever made in word or writing to DCF by me or anyone associated with Mohonk or in a capacity to authorize such a statement. Solutions and agreement and understanding were the clear intent of these communications. At this point there was no reason for me to believe that DCF would not fulfill their agreement with us. In fact, two licensed organizations were working with DCF to run the Mohonk Children's Home, including the Hall-Brooke Adolescent Psychiatric Hospital. The Claims Commissioner was not aware of these facts. It is difficult to imagine how it could be concluded that it was our intent to file a claim formally, let alone informally, against DCF. There was no determination by our Board that "damage or injury [was] sustained or discovered..."

The last reference made by the Claims Commissioner relates to a July 23, 2003 letter that, again, I wrote, this time to the Assistant Attorney General, Patricia Johnson. The Claims Commissioner states that I said, "At this point, I have reluctantly ignited my interest in filing a motion against DCF for not fulfilling our contractual agreement." Again this was coming from me personally, as an unauthorized individual and was not a statement of assertion or intent. What I believe was not considered by the Claims Commissioner was that I also immediately added, "I would appreciate your help in preventing this from happening. Please do not take that as a threat" (Attachment C). I did not have the authority to institute a suit, and I did not anticipate that a suit would be necessary. I even advised here that I was writing this letter without input from our attorney. However, I had spoken to Mohonk's attorney, David Aboulafia, and through his conversations and letters with DCF, he now believed that DCF would honor the contractual agreement that they had signed. The Department of Families and Children never stated their unwillingness to consider our interpretation of the agreement or an assertion that we were wrong in our interpretation of it. I personally believed that a meeting with the Commissioner would resolve our differences. My correspondence with DCF raised the question as a concerned individual. It was not the assertion that DCF had violated the terms of our contract. All of my correspondence was emphatic in its intent to work with DCF to come to an honorable and amicable resolution.

I had strong reason to believe that that was DCF's intention when DCF agreed to set up a meeting "so that DCF and Mohonk would both be very clear to what is needed in order to open Mohonk as a group home again." **This was not the writing of someone who intended to or even had the authority to pursue a suit.** It was correspondence that believed that there were both misunderstandings and solutions that everyone wanted resolved.

To date, however, we have not been given the opportunity to be heard by an impartial ombudsman, judge or arbitrator. Even Senator Edward Meyer of the Connecticut Legislative Sub Committee on Children was told by DCF that the "case" was closed. We finally sought to bring a claim against DCF in April, 2006. This was our final effort for our claim to be heard on its merits.

DOCTRINE OF CONTINUING BREACH

Related to this, I have also attached to our statement the original arguments presented to the Claims Commissioner by our attorney (Attachment D). In particular, this cites precedent cases for his argument that interpretation of the Statute of Limitations must be considered "under the doctrine of a continuing breach." *See Montanaro Brothers Builders v. Goldman, Rosen & Williger*, 1990 WL 265719 (Conn. Super. 1990). Our attorney also stated that, "When the wrong sued upon consists of a continuing course of conduct the statute of limitations does not begin to run until the course of conduct is completed. *See Handler v. Remington Arms Co.*, 144 Conn. 316, 321 (1957); *Manger v. Ecco Enterprises*, 1991 WL 35622 (Conn. Super. 1991); *Price v. Price*, 1993 WL171347 (Conn. Super. 1993)

I am not an attorney, and I do not understand the subtlety of interpretations that can be applied to legal doctrines such as the “doctrine of a continuing breach” referred to by our attorney. However, our contractual agreement never specified a date for the implementation of the terms, and since 1999 there were often signs of encouragement and hope that DCF would abide by them as we interpreted them. DCF, however, finally interpreted our agreement to mean that they did not have to refer children to our group home, only that they would license it. It seemed to us that since anyone can acquire a license provided they adhered to the appropriate regulations, we gained nothing by our agreement. We would not have signed it if that were the case. We all agreed that a licensed organization would run the Mohonk program. It was our understanding that the State would pay for the children that they referred to us as it does for other group homes in Connecticut. No child caring organization was interested in running Mohonk without assurances that DCF would refer children whose costs would be covered.

DCF and Mohonk and I disagreed on this interpretation, but TO DATE our perspective and DCF’s perspective have never been able to be heard. There was no date that it had to be implemented and, as such, common sense seemed to indicate that there still may not have been a breach. I do not know legally how one could specify a fixed date. The closest that seems plausible to me is when, in fact, we decided to file a claim in order to be heard. I am not sure how this may relate to the concept of a “continuing breach” except to say that it makes a determination of a date very nebulous except, perhaps, when a claim is legally filed. As such, I would like to ask the Judiciary Committee to reconsider the date of initiation of the Statute of Limitations based upon the doctrine of “continuing breach.”

AUTHORIZATION BY THE JUDICIARY COMMITTEE

Alternatively, I would also like the Judiciary Committee to please consider Connecticut Statute 4-148b that was not in the purview of the Claims Commissioner.

Sec. 4-148. Limitation on presentation of claim. Exception.

(b) The General Assembly may, by special act, authorize a person to present a claim to the Claims Commissioner after the time limitations set forth in subsection (a) of this section have expired if it deems such authorization to be just and equitable and makes an express finding that such authorization is supported by **compelling equitable circumstances and would serve a public purpose**. Such finding shall not be subject to review by the Superior Court.

Even if a case can be made that we did not file our claim within the Statute of Limitations, I would like the Judiciary Committee to consider the background of the agreement and contract between Mohonk, DCF and myself. I believe that there are “compelling equitable circumstances,” and that we “serve a public purpose,” as referenced in CT. Statute 4-148b

I will try to be as brief as possible, but highlight what I know and what could be substantiated by an impartial party.

PUBLIC PURPOSE

Mohonk has served well over 1500 children since we opened in 1981. The children came from across the State of Connecticut, including our inner cities. Most children or their parents did not pay any fee. After a number of years the state-referred children were paid for by the State of Connecticut but only for the residential program. Despite that, the children received benefits that few others could claim. The children had use of one of the most attractive facilities in Connecticut, a 23 room home in Westport. Our children had free and open use of all of the athletic facilities, the extraordinary schools of Westport, the marinas and the local country club and beaches. We had both power boats and sailboats. We had (and still have) our own 185 camp ground. Our children were mentored by many local families and individuals. Once we spent a day on Wall Street on a personal tour after arriving by helicopter to downtown New York. One of our neighbors offered to pay for the entire costs of college for one of our students. Our children had opportunities that seemed limitless because of the generosity and support that we were able to achieve in Fairfield County. Regardless of our children's backgrounds, we wanted our children to know that the sky was the limit. We lived that. It was not a cliché. Our students were able to travel overseas because of the fundraising that we were able to achieve. The list goes on and on. Further, we also were recognized for having the lowest number of alcohol, drug, or criminal incidents of any group home in the State of Connecticut.

The public good was served by our commitment and dedication to the children who needed us.

COMPELLING EQITABLE CIRCUMSTANCES

The contract between Mohonk and DCF and me, personally, in 1999 was an effort to end the years of tumultuous relationship that we had had (Attachment E). I began Mohonk in 1981 and gave up my lucrative career as a therapist in order to open a home for neglected, troubled, abused and orphaned children; those children who could not afford me. I paid for everything. However, when my funds became insufficient, I asked DCF to pay for the children that they had been sending to us just like they did for other group homes. They refused, but former Governor O'Neill interceded on our behalf and made DCF pay us. I was told then that I would regret doing that. Still Mohonk became recognized as a model group home. Former Governor Rowland described it "as a group home that should be a model for others," and we received a number of awards over the years. One of our proudest was one we, I should say the children, received when they returned \$6000 in cash they found in Westport. They could have gotten away with it but they choose to return it. Then in 1991 I testified against DCF before the Federal Monitoring Committee, and I worked aggressively to improve DCF for a number of years after that. We paid for that. Despite the fact that one of our last state inspections went so far as to state in its conclusion that Mohonk "must be commended for its homelike, caring and stimulating environment it provides to its residents," our relation with DCF administration and, in particular my relationship with DCF administration continued to decline. We have subpoenaed statements and dated documented

evidence that DCF pursued extraordinary and illegal efforts to remove Mohonk's license and end my efforts to work with children. For instance, the same inspector who wrote the comment quoted above stated the following year that "I felt like a prostitute being told to come done here to try to find something wrong." I am so sorry for that. I still do not understand. One of the most senior staff within DCF stated that DCF destroyed some of our most positive files, including the report quoted above. We have, in fact, prima facie evidence that goes beyond any doubt that that was done. I believe that because of this there are "compelling equitable circumstances" that would support a decision to by the Judiciary Committee to allow us to be heard with regards to the merits of our claim. We are not seeking to make a claim against DCF for the wrongs that we believe have been committed by them. We are only seeking the opportunity to have an impartial hearing to interpret and determine the agreements that both sides signed in 1999.

I believe that the evidence was extraordinary enough that DCF agreed to all of the terms of our 1999 agreement and contract in order to avoid being faced with the accumulative evidence against them. I wish I could do this all over. I wish we had gone to an administrative hearing. More than that, I wish DCF and Mohonk and I could have found a way to work together and avoid an administrative hearing. Even more than that, I wish DCF would simply honor our present agreement. That is the only goal we have at this time. That is all that we and I are asking for. In 1999 I had three young boys. I was ready to let others run Mohonk. I wanted to spend more time with my family. Although I saw Mohonk as a family, I recognized that just as one must let their own children go at some point; it was time for others to run Mohonk. This was a difficult decision, and an emotional one, but it was the right one. That was the basis for me of what our agreement with DCF was all about. I wanted peace with DCF. I have attached the letter that I sent to all administrative heads at DCF after our agreement was signed (Attachment F). Please take the time to read it. It is not a cliché. It is what I hoped and prayed for. It reflects what my goals were and still are. It reflects what my dreams were and still are. Please consider this.



David A. Singer, EdD

Acting with Authority by the Board of Directors of Mohonk Children's Services