

IT IS FURTHER ORDERED, that personal delivery of a copy of this Order to Show Cause and the affidavit upon which this Order is based to

a) the Office of Barbara B. Blum located at Two World Trade Center, New York, New York;

b) the Office of Claire Pearce located at 80 Lafayette Street, New York, New York;

c) the Office of James A. Krauskopf located at 250 Church Street, New York, New York;

d) the Office of the Corporation Counsel of the City of New York located at 100 Church Street, New York, New York; and

e) the Office of the State Attorney General of the State of New York located at Two World Trade Center, New York, New York.

by 12:00 noon, December 21, 1981 shall constitute good and sufficient service of this Order, affidavit and affirmation.

Dated: New York, New York
December , 1981

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ADVOCATES FOR CHILDREN OF NEW YORK, :
INC. et al., :
 :
Plaintiffs, : 81 Civ. 7769 (JES)
 :
-against- : AFFIDAVIT OF GEORGIA
 : L. McMURRAY AND JOAN
BARBARA B. BLUM as Commissioner of : E. OHLSON ON BEHALF
Social Services of the State of New : OF THE NATIONAL ASSO-
York et al., : CIATION OF SOCIAL
 : WORKERS INC. AND ITS
Defendants. : NEW YORK CITY CHAPTER
:
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STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

Georgia L. McMurray and Joan E. Ohlson, being duly sworn, depose and say:

1. We are the elected President and President-elect of the New York City Chapter of the National Association of Social Workers, Inc. We make this affidavit on behalf of the National Association of Social Workers, Inc., and its New York City Chapter for leave to participate in this action as Amici Curiae and to urge the court to maintain the status quo and continue payment by the City to the affected agencies while the lawsuit is in progress.

2. The National Association of Social Workers, Inc. (hereafter referred to as NASW), is a nonprofit membership corporation with approximately 90,000 members. It is the largest professional association of social workers in the world, with chapters in each of the 50 states, the District of Columbia, and overseas. There are approximately 6,800 members of the New York City

Chapter of whose Board of Directors we are members.

3. Among the purposes of NASW as stated in its By-laws are:

To improve and extend social work practice through:

a. Setting standards and establishing criteria for sound practice.

b. Conducting appropriate study and research.

* * *

To bring about optimum working conditions through establishment of personnel standards and practices.

To improve the administration of social work services.

To develop, promulgate, and enforce a Code of Ethics for social workers.

* * *

To collaborate with other professional groups to insure cooperative effort between the social work profession and other professions and groups with which social work is or may become associated.

To interpret to the community the contribution of the professional social worker, including basic and specialized qualifications.

To make studies and to take action in relation to social conditions.

* * *

4. The issues in this legal action are of great significance to the social work profession and to the members of NASW and its New York City Chapter. Among the members of the chapter are employees of the private agencies which provide preventive services and of the city of New York, who are affected by the issues of this litigation. Among the concerns of the members of NASW are the implications of the NASW Code of Ethics which provides in part:

II. H. Confidentiality and Privacy—The social worker should respect the privacy of clients and hold in confidence all information obtained in the course of professional service.

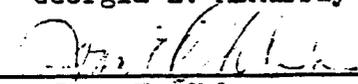
1. The social worker should share with others confidences revealed by clients, without their consent, only for compelling professional reasons.
2. The social worker should inform clients fully about the limits of confidentiality in a given situation, the purposes for which information is obtained, and how it may be used.
3. The social worker should afford clients reasonable access to any official social work records concerning them.
4. When providing clients with access to records, the social worker should take due care to protect the confidences of others contained in those records.
5. The social worker should obtain informed consent of clients before taping, recording, or permitting third party observation of their activities.

These requirements are enforceable through NASW's grievance and adjudication procedures which may lead to imposition of the sanctions. Furthermore, there is a patent unfairness in compelling the disclosure of confidential information given before it was known that such information would subsequently be turned over to the City of New York. As the affidavits in support of Plaintiffs' motion for a preliminary injunction make clear, there is great concern over the chilling effect that knowledge that private and personal information will be turned over to the city of New York may have upon full disclosure to the professional social worker that is deemed necessary for the proper performance of preventive services to children and their families. It is, of course, the proper performance of these preventive services that is the most important feature of this lawsuit.

5. Among the members of the New York City Chapter are administrators of public and private agencies, educators, researchers, and direct service practitioners of social work services. We respectfully submit that as Amici Curiae, NASW and its New York City Chapter might be of assistance to the court in helping to develop procedures that permit the City of New York "to adequately review case management" as called for by Section 409-F of the Social Services Law, without violating the important right of privacy which Plaintiffs have described in their papers.

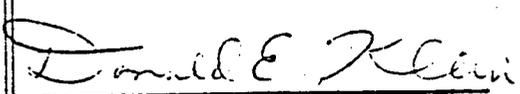
6. We respectfully submit on behalf of NASW and its New York City Chapter that disclosing confidential material cannot be cured by any subsequent order of the court. Moreover, termination of these preventive services to children and their families while the important issues of this litigation are being determined is not in the interest of those who need and are receiving the services or in the public interest. Termination of payment to any of the agencies would create human chaos that could not be resolved by any subsequent direction of the court.

Georgia L. McMurray


Joan E. Ohlson

Sworn to before me this

18th day of December, 1981.



Notary Public

DONALD E. KLEIN

NOTARY PUBLIC, State of New York
No. 31-7291425

Qualified in Westchester County
Commission Expires March 30, 1982

of Directors to act on behalf of these amici curiae in this action. Among the reasons for our selection is that our individual views as to the scope of the principles of "confidentiality" and "accountability" differ; in this respect, we reflect the differences which exist within the membership of the Chapter with respect to the principles which have been advanced by the Plaintiffs and by the Defendants in support of their respective positions. Each of us is a Certified Social Worker under the laws of this State. Georgia L. McMurray is presently Deputy General Director For Program of the Community Service Society; Michael H. Phillips is presently a Professor at Fordham University Graduate School of Social Service; and Joseph Wagman is presently the Executive Director of New York Service Program For Older People Inc. Two of us have previously served as senior executives of public agencies. Each of us has had protracted experience in providing social services to families and in resolving questions of "confidentiality" and "accountability" on a day to day basis.

2. Recognizing that before the Court at this time may be an issue of what ought to be done while the legal and factual issues of the case are being developed, we have jointly prepared this affidavit in the hope that we might be of some assistance to the Court. Notwithstanding the substantial differences among us, we are in agreement as to the following:

- a. The most important consideration is that proper care be provided the children who are in need of preventive services in a timely and efficient manner.

b. In the course of providing services a social worker often makes a reasonable judgment that private and personal information necessary for the making of decisions cannot be obtained without the expectation that it will be held by the social worker in confidence. (Information received as a result of court testimony or after the fully informed consent of the provider of the information has been obtained is not received by the social worker with the expectation that it will be held in confidence; in our view, informed consent includes advising the provider of information, in advance, of all circumstances, including those required by law, under which the information might be disclosed by the social worker). When information is obtained by a social worker employed by a private agency performing preventive services under a contract with the City of New York, with the expectation that the information will be held in confidence, such information will be patently evident in the UCR. In our opinion, the further

disclosure of such information, identifiable as to source, without the informed consent of the provider of the information, is wrong. Further disclosure is wrong: whether done by one (1) such agency or by twenty-eight (28) such agencies; whether done by social workers who provide foster care services or by social workers who provide preventive services; whether done by social workers who are employed by private agencies or by social workers who are employed by the City of New York.

- c. The City of New York has a legitimate interest in obtaining information from private agencies providing preventive services that receive funds from the City in order to "adequately review case management" done by the private agencies (New York Social Services Law Section 409-F). Such review takes place after the decisions have been made and implemented by the private agencies. Information in the UCR is definitely useful to the City in order to enable it to assess whether proper care has been provided by the private agency in a timely and efficient manner. (We use the past tense advisedly because services are provided by the private agencies before the UCR's are required

to be sent to the City and services continue to be provided by the private agencies while UCR's which have been received are subject to review). However, in our opinion the identification of all persons interviewed can be deleted from the copy of the UCR that is reviewed by the City without interfering in the slightest the City's review of case management, including the questioning of the private agencies' conclusions and decisions. Identification of persons interviewed by the social workers simply does not contribute to a conclusion as to whether the private agencies' conclusions and decisions were proper.

- d. Separate and apart from whether proper care has been provided by the private agencies in a timely and efficient manner, the City has a further legitimate interest in knowing who is receiving services from each of the private agencies receiving funds from the City. Such information will be useful in allowing the City to obtain information from the treating social workers in cases of possible child abuse or other emergencies. In our view, contacting the private agencies' personnel who are familiar with the situation is preferable to trying to weed out some information that

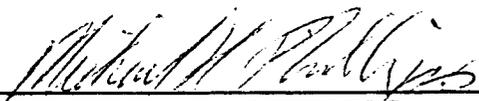
may be pertinent from a form that is already dated when received by the City. The identity of those receiving preventive services from the private agencies will enable the City to investigate possible improprieties in connection with the obtaining or receipt of preventive services; it will also enable the City to investigate possible improprieties in the provision of preventive services and billings by the private agencies. However, in our opinion, information in the UCR is not necessary for any of these purposes if the identity of those receiving preventive services is regularly made known to the City in some other way.

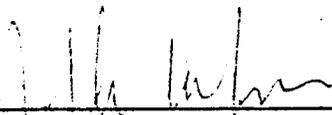
3. Based upon the considerations we have discussed above, we respectfully recommend to the Court that, while this case is pending, private agencies providing preventive services provide the City with:

- a. Copies of UCR's which have all identifying data as to individuals receiving services and their families excised but marked with a substitute coded means of identification known to the agency;
- b. A separate monthly report, devoid of connection with the UCR's, listing the names,

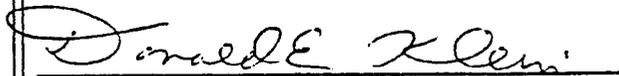
addresses, social security numbers, names
of the children of all persons who have
received preventive services and the num-
ber of visits during the month.


GEORGIA L. McMURRAY


MICHAEL H. PHILLIPS


JOSEPH WAGMAN

Sworn to before me this
23rd + 24th days of December 1981



DONALD E. KLEIN
NOTARY PUBLIC, State of New York
No. 31-7291425
Qualified in Westchester County
Commission Expires March 30, 1982

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
JUL 26 1982
S. D. OF N. Y.

ASSOCIATES FOR CHILDREN OF
NEW YORK et al.,

Plaintiffs,

-against-

BARBARA BLUM, as Commissioner
of Social Services of the State
of New York et al.,

Defendants.

81 Civ. 7769
(JES)

INTERIM AGREEMENT OF SETTLEMENT
AND COMPROMISE

This action was instituted on December 14, 1981 seeking declaratory and injunctive relief, pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983, to declare unconstitutional and to enjoin enforcement of the New York Child Welfare Reform Act of 1979, N.Y. Social Services Law §§ 409 et seq. (McKinney's 1980-1981 Supp.), and regulations promulgated thereunder, insofar as they would require plaintiff preventive services agencies to turn over to the City or State of New York in client-identifiable form Uniform Case Records compiled by the agencies on all their preventive services clients.

MICROFILM

JUL 26 1982

Defendants are Barbara B. Blum as Commissioner of Social Services of the State of New York (the "State"); James A. Krauskopf as Administrator/Commissioner of the Department of Social Services, Human Resources Administration of the City of New York; and Gail Kong as Acting Deputy Administrator for Special Services for Children of the Department of Social Services, Human Resources Administration of the City of New York (collectively, the "City"). All of the defendants are sued in their official capacities.

Plaintiffs are eighteen private preventive service agencies in the City of New York suing individually and Jane Doe and Mary Roe, preventive services recipients, suing as class representatives on behalf of all clients of private preventive services agencies in the City of New York whose Uniform Case Records have not been transmitted to the City or State of New York.

On December 30, 1981 this Court issued a preliminary injunction enjoining the State and City during the pendency of the case from requiring that Uniform Case Records be transmitted to them and prohibiting them from withholding funding to the agency plaintiffs for their failure to do so.

Attorneys for plaintiffs and defendants have thoroughly investigated the issues in this case, including extensive discovery and inspection of documents, the taking of twenty-eight depositions by plaintiffs and defendants, the

answering of interrogatories by plaintiffs and defendants, and extensive preparation for trial. Subsequently, plaintiffs and defendants engaged in negotiations and have agreed to enter into this Interim Agreement of Settlement and Compromise ("Agreement").

It is therefore, STIPULATED and AGREED:

1. Plaintiffs have alleged that this Court has jurisdiction over the subject matter of all plaintiffs' claims against the defendants and jurisdiction over the persons of the defendants with respect to these claims. The State denies that this Court has jurisdiction over the subject matter of plaintiffs' claims except that the State does not contest that this Court has jurisdiction to enter this order.

2. Defendants will apply this Agreement to all preventive services agencies and their clients in the City of New York.

CO-OPERATION BETWEEN DEFENDANTS AND AGENCY PLAINTIFFS

3. The defendants and the agency plaintiffs will use their best efforts and cooperate fully in meeting the goals and carrying out the provisions of this Agreement and to ensure compliance with the Child Welfare Reform Act of 1979 and the New York Social Services Law.

4. Each agency plaintiff will promptly provide to the Special Services for Children Child Protective Service

worker the personally identifiable Uniform Case Record of any client who (or a member of whose immediate family) is the subject of alleged child abuse or neglect reported from the Statewide Central Register pursuant to Title 6 of Article 6 of the New York Social Services Law. So long as the Child Protective Services indicated cases are active, each plaintiff agency will transmit the personally identifiable Uniform Case Records to the Special Services for Children Child Protective Service worker.

5. Each agency plaintiff upon request will transmit to the City the personally identifiable Uniform Case Records of children who have been referred to the City for foster care placement.

6. Each agency plaintiff upon request will transmit to the City the personally identifiable Uniform Case Records of children who are siblings of a child in foster care. It is estimated that this comprises between 5 and 15% of the total private preventive services population.

7. Each agency plaintiff will provide contact persons and telephone numbers for a 24-hour "hot line" available for quick access to records in cases of alleged child abuse or neglect reported from the Statewide Central Register.

8. Each agency plaintiff will make staff available to the Special Services for Children Child

Protective Services worker upon his or her request in child protective cases regarding clients of that agency.

9. Except as provided herein, the agency plaintiffs will supply defendants with all information presently required to be entered into the Welfare Management and Child Care Review Service computer systems for all preventive services clients, but defendants shall not require private preventive services clients to disclose any information in addition to that presently required. Copies of the present information forms are annexed hereto as Exhibit A.

10. Clients of private preventive services agencies will be provided with a notice form along with the Welfare Management System Common Application Form applicable in New York City as set forth in Exhibit B hereto.

11. The defendants shall not require clients of private preventive services agencies to disclose their citizenship status, social security number or the names of members of their household other than those receiving preventive services or those related by blood or marriage. Nothing in this paragraph shall operate to reduce or eliminate the eligibility of the City or State for federal funds available for the preventive services program.

12. Access to preventive services information shall be limited to those persons and agencies currently

identified in the Regulations of the New York State Department of Social Services, Sections 357, 423, 428, 465 and 655.

ARRANGEMENT IN LIEU OF PRELIMINARY INJUNCTION

13. The preliminary injunction issued by this Court on December 30, 1981 is hereby dissolved as of the effective date as defined in paragraph 18²⁵ of this Agreement, upon the conditions and terms provided in this Agreement. In lieu of the preliminary injunction, the following arrangement, as well as the other provisions of this Agreement, will be complied with by the parties.

14. Except as provided herein, defendants shall not require transmittal to the City or State of personally identifiable Uniform Case Records of private preventive services agency clients, nor shall defendants withhold funding of private preventive services agencies or in any way penalize them for their failure to so transmit personally identifiable Uniform Case Records.

15. Access to complete personally identified Uniform Case Records of private preventive services clients will be provided to the City and State "on-site" during normal business hours at each agency providing services to that client. Each private preventive services agency will make an employee available to be present during the "on-site" review to assist the Special Services for

Children worker. During the "on-site" reviews, the parties will cooperate to protect the privacy of preventive services clients and to facilitate effective certification and case management. The plaintiff agencies will, if requested, supply defendants with Uniform Case Records that are not personally identifiable.

CLASS ACTION PROVISIONS

16. Pursuant to Rule 23(b)(2) Fed. R. Civ. P., the class to which this Agreement applies is defined as all clients of private preventive services agencies in the City of New York (the "Class"),

17. Within ¹⁰~~30~~ days of the entry of this Agreement, the defendants shall give notice of this Agreement to the Class.

18. The form of the notice shall be as set forth in Exhibit C to this Agreement. The notice shall afford members of the Class an opportunity to file objections to this Agreement with the Clerk of this Court within 15 days following the date of the initial publication of the notice. The notice shall be given in a manner calculated to reach the maximum number of class members reasonably feasible. If there are any objections to the Agreement, there shall be a hearing in Room 2704 of the United States Courthouse, Foley Square, New York, New York at such time as this Court may direct. Otherwise, this Agreement will take effect without

any further action by this Court 30 days after this Court so orders this Agreement.

19. A copy of the notice shall be posted in a prominent location at each of the offices of the agency plaintiffs and, in addition, at each office of the other private preventive services agencies in the City of New York listed on Exhibit D to this Agreement.

NOTICE TO PARTIES

20. Any notice, report or communication required by this Agreement or made pursuant to this Agreement shall be sent by first class mail, postage prepaid, as follows:

To Plaintiffs:
Joseph T. McLaughlin, Esq.
Shearman & Sterling
153 East 53rd Street
New York, New York 10022

To Defendants:
Gregg Mashberg, Esq.
Assistant Corporation Counsel
City of New York
100 Church Street
New York, New York

AND

Paul Glickman, Esq.
Assistant Attorney General
State of New York
Two World Trade Center

AND

John Stupp, Esq.
Assistant Counsel
New York State Department of Social Services
40 North Pearl Street
Albany, New York 12243

21. Any party may change the above designated addressee or address by written notice to the other parties. A copy of such notice shall be filed with the Clerk of this Court.

TERM OF THIS AGREEMENT

22. This Agreement shall be in effect for an initial term of 12 months after it takes effect. As of the same date, the court shall transfer this suit to the Suspense Calendar pursuant to Rule 20 of the Rules For The Division Of Business Among District Judges Of The Southern District of New York Pursuant To Title 28 United States Code Section 137. If at the expiration of the initial term, the City in its sole discretion determines that the on-site review procedure is unworkable, the City may within 30 days give notice to this Court and all parties and terminate this Agreement or the City may unilaterally extend the initial term of this Agreement for six months. Upon a termination, the City will request pursuant to the applicable rules that this Court transfer the suit from the Suspense Calendar and reactivate the suit. If this suit is reactivated, it shall return to its present posture and all prior proceedings, including all discovery materials, shall remain a part of the record of the reactivated suit and all parties shall have 30 days to complete discovery.

23. If this suit is not reactivated within 30 days of the expiration of the initial term of this Agreement then

this Agreement shall become final without any further action by this Court and the Stipulation and Order dismissing this suit, a copy of which is annexed hereto as Exhibit E, shall be filed with this Court by plaintiffs.

MISCELLANEOUS

24. This Agreement shall be binding upon each of the plaintiff agencies and the defendant officials, their agents, employees and representatives, and upon their successors in office without the necessity for formal substitution.

25. This Court retains jurisdiction of this action for purposes of granting any further relief or other appropriate orders as set forth in this Agreement.

26. This Agreement does not constitute an admission by any party as to any violation of law or issue of fact or law regarding the merits of this suit nor does it constitute a waiver of plaintiffs' claim for attorneys' fees against defendants nor any defense defendants may have against that claim. In entering into this Agreement, defendants do not intend to establish any precedent for future litigation against them. This Agreement shall not be construed as limiting reporting requirements for other social welfare programs for which preventive services clients may also apply.

27. Any party may request the other parties to modify this Agreement for good cause including, but not limited to, changes in federal requirements relating to

funding or the administration of preventive services and in such instances the other parties shall not unreasonably withhold their consent. Failing such consent, any party may move before this Court to amend this Agreement and on a showing of good cause this Court may order such amendment.

28. No provision of the Child Welfare Reform Act nor any other social welfare statute is affected other than as explicitly provided herein.

29. The validity of this Agreement is entirely contingent upon this Court's so ordering this Agreement. If, for any reason, this Agreement should not be so ordered, all terms set forth herein shall be null, void and of no legal effect.

Dated: New York, New York
July 23, 1982

SHEARMAN & STERLING

SOL SCHREIBER, ESQ.
of Counsel to Plaintiffs

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A Member of the Firm

Attorneys for Plaintiffs
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New York, New York 10005
(212) 483-1000

COMMISSIONER OF SOCIAL SERVICES
STATE OF NEW YORK

By Barbara B. Blum

ATTORNEY GENERAL OF THE
STATE OF NEW YORK

By William M. Kaufman

Asst. Atty. Gen.
Attorneys for State Defendant
Two World Trade Center
New York, New York 10047
(212) 488-3442

CORPORATION COUNSEL OF THE
CITY OF NEW YORK

By Paul Meyer
Assistant Corporation Counsel

Attorneys for City Defendants
100 Church Street
New York, New York 10007
(212) 566-2505

SO ORDERED:

J. L. [Signature]
U.S.D.J.
JUL 23 1982