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MHLS Offers Guidance, Hope to the Vulnerable

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Last year, Mental Hygiene Legal Service (MHLS) commemorated its 50th anniversary—a milestone reminding us that for over half a century, MHLS has provided superior legal services to the most vulnerable members of our society. Undoubtedly, the mission of MHLS has evolved over time,¹ yet the outstanding dedication and focus exhibited by MHLS when representing individuals with disabilities has remained steadfast.

The mandated activities of MHLS are defined by the special rules of each Appellate Division² and are statutorily prescribed by article 47 of the Mental Hygiene Law. Among other things, §47.01 prescribes that MHLS provide legal assistance to patients or residents in facilities licensed or operated by the Office of Mental Health and the Office for People with Developmental Disabilities.³ It also states that "there shall be a mental hygiene legal service of the state in each judicial department" and indicates that the presiding justice must establish standards and qualifications for its personnel.⁴ The powers and duties of the Service are summarized below:⁵

(1) to study and review the admission and retention of all patients or residents, which shall include a review of the willingness of the patient or resident to remain in his or her status;

(2) to inform patients or residents of the procedures for admission and retention and of the right to have a judicial hearing and review;

(3) to inform patients or residents of other legal resources which may be of assistance;

(4) to be granted access at any and all times to mental hygiene facilities for the purpose of carrying out its functions, powers and duties; and

(5) to initiate and take legal action deemed necessary to safeguard the right of any patient or resident to protection from abuse or mistreatment

In addition to these duties, MHLS attorneys may also serve as counsel, court evaluator or guardian ad litem in Mental Health Law art. 81 and Surrogate's Court Procedure Act art. 17-A guardianship proceedings. MHLS is also charged with representing criminal

defendants who are alleged to be incapacitated by reason of mental disease or defect pursuant to Criminal Procedure Law (CPL) article 730 and defendants found not responsible by reason of mental disease or defect pursuant to CPL 330.20. Inmates confined in correctional facilities suffering from mental illness are also constituents of MHLS.⁶ The services provided to inmates range from representing them in involuntary treatment proceedings to representing inmates who are referred for civil management pursuant to the Sex Offender Management and Treatment Act.⁷ MHLS attorneys do not offer criminal defense services to their clients, but may offer assistance to the defense bar when the mental status of a criminal defendant is at issue.⁸

Although all four judicial departments share the same mission, the offices are organized differently.⁹ The Third Department encompasses 28 counties that stretch from the Canadian border in the north to the lower Catskills in the south and from the Vermont and Massachusetts borders in the east to the Finger Lakes in the west. To best serve the needs of individuals across our sprawling department, MHLS offices are divided into three geographic regions—Albany, Binghamton and Ogdensburg. In addition, there are satellite offices in Kingston, Oneonta, Elmira, Tupper Lake and Plattsburgh. Each office represents clients in multiple practice areas. Due to the sensitive nature of so many cases, MHLS attorneys must balance the ability to empathize with their clients with the need to maintain a conventional attorney-client relationship, as much as possible.

Justices and judges who preside over MHLS hearings consistently praise the work of MHLS attorneys. They applaud the fact that MHLS attorneys excel at representing the desires of their clients in a sensitive and exemplary way. Not only are they thorough and well-versed in the law, but they have a great deal of empathy for their clients. The bench also appreciates the fact that MHLS attorneys have mastered the art of representing the interests of their clients, while treating them with great dignity. Indeed, even when hearings go in very unexpected directions, MHLS attorneys carry themselves with great calm, poise and full understanding.

The staff at MHLS also shared sentiments about the work they do. David M. LeVine, the soon-to-be retired Deputy Director of MHLS in the Third Department with 37 years experience, shared the following:

I am especially proud of everything the [MHLS] staff does on a day to day basis to counsel and assist its clients in charting a course that will meet the individuals' needs and interests, without the need for judicial intervention. In 2013 alone MHLS staff statewide provided more than 361,000 advocacy services on behalf of persons admitted to inpatient and community based facilities for the mentally disabled. The 9,774 court hearings that were conducted in 2013 were, therefore, just the tip of the advocacy iceberg and the citizens of the State of New York owe a debt of gratitude to everything the dedicated staff of this small agency does behind the scenes to promote the welfare of its clientele.

What appears to be a common theme among the new and seasoned attorneys at MHLS is that they understand the value of providing a voice to their clients in situations where they would not ordinarily be heard.

Conclusion

As Presiding Justice, I have the honor of officiating at admission ceremonies for attorneys who wish to practice in the Third Department. In my remarks, I often emphasize the importance of zealously representing each client. Clearly, MHLS attorneys provide an excellent example; they have dedicated their legal careers to the advocacy of individuals with disabilities, providing hope and guidance to the vulnerable.

Endnotes:

1. Sheila Shea, The Mental Hygiene Legal Service at 50: A Retrospective and Prospective Examination of Advocacy for People with Mental Disabilities, NYSBA Government, Law and Policy Journal, Winter 2012, Vol. 14, No. 2.
2. 22 NYCRR 622; 694; 823; 1023.
3. Mental Hygiene Law §47.01(a).
4. Mental Hygiene Law §47.01(a).
5. Mental Hygiene Law §47.03(a-e).
6. Testimony of the Mental Hygiene Legal Service, Assembly Public Hearing/Mental Illness in Correctional Settings, November 13, 2014 (pp. 3-7).
7. Mental Hygiene Law art 10.
8. Sheila Shea, Defense Practice Tips: Representing Clients with Mental Disabilities, Public Defense Backup Center Report, Volume XXVIII, Number 1 (January-April 2013).
9. Mental Hygiene Law §47.01(a).

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