

Department of Justice Activities Throughout the USA

Thomas York, Esquire

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Thomas York is the founder of The York Legal Group located in Harrisburg, Pennsylvania and he is the foremost attorney in the country who assists states to respond to Department of Justice suits against public ICF/MR providers. Mr. York has been practicing law for more than 30 years and has been focused on helping states to respond to the DOJ for the past 20 years. He has been the lead attorney on DOJ cases in many states and most recently completed a six week trial in the DOJ suit against Arkansas. A decision in favor of the State was issued on June 7, 2011. (See <http://vor.net/get-help/legal-resources>).

Mr. York opened his presentation with a warning about the motives of the DOJ. He believes that the DOJ is trying to close Public Residential Facilities (PRFs) and he gave a series of quotations by Sam Bagnestos, the head of the DOJ's Civil Rights Division to support his claims. These quotations show that Mr. Bagnestos' personal philosophy is anti public residential facilities. Mr. York also presented the arguments that the DOJ is using in CRIPA, ADA, and Olmstead suits.

Mr. York outlined the process steps of a typical DOJ case. The steps include: Investigation Letter; Initial Tour with DOJ experts; Letter of Findings (Results may or may not be shared with state); Settlement discussions; Filing of the complaint; Set the case schedule; Selection of experts & expert tours; Complete discovery & depositions; Trial; Briefs & Pleadings; and Judge's ruling. He suggested that these steps are intended to even the playing field for the parties, and that scheduling and the filing of injunctions are two critical issues for defendants. Setting the schedule for the case is important because it sets time lines for both sides to collect data and prepare the case. Injunctions are actions by the court to stop activities by one of the parties that are allegedly placing people at risk. Recently, Mr. York has observed that the DOJ has been using injunction filings to gain an advantage in these cases. For example, in a recent case the DOJ filed an injunction just before the defense's experts started their visits at the Center being sued.

This prompted a number of actions that effectively put the State at a disadvantage because it reduced the amount of time the defense had to collect information about the Center. Mr. York also related one experience when the DOJ filed a preliminary injunction seven years after they had conducted their expert visits. Mr. York added that the center had only improved since the first DOJ had visited. He believed this action was undertaken to disrupt the pretrial planning activities of the defense.

Mr. York indicated that he believes that the DOJ will be initiating litigation at community residential facilities in the future. In terms of advice, Mr. York made a number of suggestions for agencies that receive letters of investigation from the DOJ. First, he recommended that from the start, States must realize that the DOJ wants to close PRFs. Second, States should be

cautious in entering into a settlement agreement. Third, States should engage experts and complete an independent assessment of the conditions. Finally, that States should not be apologetic regarding center-based services. Mr. York closed his remarks by challenging the attendees to promote the good services and outcomes that Centers are able to achieve. He also suggested that we need to change the argument from “Institution versus Community” to “Bundled Services versus Unbundled Services”. And finally, States and providers need to get the message out that PRFs are just one of the available service options in the continuum of care that is available for providing person centered services to people with Intellectual disabilities.

Thomas York is a Magna Cum Laude graduate of Indiana University of Pennsylvania and a Cum Laude graduate of the University of Pittsburgh School of Law. Mr. York concentrates his practice around Civil Rights of Institutionalized Persons Act (CRIPA) actions, Americans with Disabilities Act (ADA) actions and represents various states in section 1983 class actions. Mr. York served as Deputy Attorney General for the Commonwealth of Pennsylvania and Chief of Litigation with the Department of Public Welfare. Mr. York has 28 years of experience in legal practice which includes litigation involving civil rights, employment discrimination, labor law, constitutional law, environmental law, commercial transactions, health care reimbursement, product liability, personal injury and real estate transactions.