

August 27, 2010

By Federal Express

The Honorable Ronald M. George, Chief Justice
and Honorable Associate Justices
California Supreme Court
350 McAllister Street
Room 1295
San Francisco, California 94102-4797

Re: Opposition to Request for Depublication of California Court of Appeal, Sixth District's Decision in *In re Michael K., on Habeas Corpus* (June 22, 2010), H034209.

Dear Chief Justice George and Associate Justices:

Voice of the Retarded (VOR), the California Association of State Hospital Parent Councils for the Retarded (CASHPCR), the Association for the Mentally Retarded at Agnews (AMRA), and the California Association of Psychiatric Technicians (CAPT), join together in strongly **objecting** to requests by the Disability Rights California (DRC) and the San Andreas Regional Center (SARC) to depublish the California Court of Appeal, Sixth District's Decision in *In re Michael K., on Habeas Corpus* (June 22, 2010), appeal number H034209.

Interest of the VOR, CASHPCR, AMRA and CAPT

VOR is a national advocacy organization representing thousands of individuals with intellectual and developmental disabilities, and their families, in California and across the country. VOR is dedicated to ensuring that individuals with intellectual and developmental disabilities receive the care and support they require in a setting appropriate to their needs, including home, community residences, and licensed facility settings. A corollary objective is to advance the family participation in the choice of treatment options, with the decisions of the disabled person and his or her family recognized as primary, a right recognized by federal law. (See, *Olmstead v. L.C.*, 527 U.S. 581 (1999); and the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §15001(c)(3) (2000), the federal authorizing statute for DRC).

CASHPCR is a statewide organization comprised of families and friends of the residents of the California State Developmental Centers dedicated to insuring that all persons with developmental disabilities receive the quality services and supports necessary for them to realize their full potential, as mandated by the Lanterman Act.

AMRA represents the former residents of Agnews Developmental Center, and their families.

CAPT is the professional association for approximately 14,000 state-licensed Psychiatric Technicians who work in California's programs serving people with mental illnesses and developmental disabilities.

Argument in Opposition to Depublication

In support of depublication, DRC and SARC have advanced what are essentially legal arguments that this Court will review if the pending Petition for Review is granted. Both DLC and SARC go to great lengths to describe the procedural track of this pending matter, beginning with the exhaustion of administrative remedies and ultimate appeal (by the public defender) to the court system. Each suggest that the decision is “misleading, incorrect, and inaccurate,” and based on a unique factual scheme.

In reality, the factual scheme is common and the reaction by DLC and SARC is predictable.

At the heart of this matter is DLC and SARC’s well known opposition to developmental center care for any individual, regardless of need and choice. So common are the present set of facts, that both DLC and SARC have standing policies and pursue activities which advance a philosophy that **all** people with intellectual and developmental disabilities, regardless of need, are best served in community-based settings. This philosophy is evident in the letters to this court asking for depublication, as well as in the organizations’ stated policies [see e.g., DRC’s “Advocacy Principles, Priorities and Goals,” 2008-2012 (Principles include “end[ing] institutionalization,” and “working toward goal of returning to the community”; and SARC’s “Services Provided” and “Rights” statements at <http://www.sarc.org/overview.html> (“Services are individually determined and are provided to assist with opportunities to maximize consumers’ opportunities to live independent productive and satisfying lives as members of our community,” and “These rights include, but are not limited to: . . .social integration and community participation”)].

As in the present case, DRC and SARC activities to advance community-only services are often counter to express family/conservator preferences [See e.g., *Capitol People First, et al., v. Dep’t of Developmental Servs., et al.* (Case No. S157911) (DRC unsuccessfully objected to efforts by families and conservators to intervene in, a DRC community integration class action case, stating, “As a matter of substantive law, parents and guardians of institutionalized persons have different and potentially conflicting interests on matters pertaining to their child’s or ward’s constitutional or statutory rights to liberty and due process”)].

Given their ideological opposition to developmental center care, it is not surprising then that both DRC and SARC seek to undermine the reach of the appellate court’s decision by seeking depublication.

Depublication is simply not warranted and would do a disservice to families across California, who, like Gail Bowen and Michael, seek the most appropriate care setting to meet life sustaining needs. **The factual situation in the present case, including opposition by DRC and a regional center, has been played out many times before across California.** The community only, anti-choice activities by DRC and regional centers are happening even now and will continue into the future if this case is depublished.

Most families do not have the resources or wherewithal to carry their cases through the administrative and court processes. Gail Bowen, in that sense, is a trailblazer – motivated, as the Administrative Law Judge Karen Brandt recognized, by her “love and devotion” to Michael. Depublication would render her brave efforts on behalf of families across California meaningless. Having this case as published legal precedent will ease the burden of families in the same situation, and avoid burdening courts by eliminating needless litigation in these matters.

Conclusion

DRC and SARC's justification for depublication relate primarily legal arguments which are irrelevant to their request for depublication. Whether or not the Appellate Court properly held that *res judicata* applied to public defender's appeal of the ruling by the administrative court is a question of law, not fact. With regard to this finding, the Appellate Court seemed only concerned that a nonparty to the administrative court proceeding filed the appeal, not SARC. Thus, the concerns raised by DRC that the preclusive effect of the appellate court's ruling with regard to Michael's placement is permanent is unfounded and undermined by DRC's own argument. Although Michael's needs since at least 1986 have not been "fluid," if and when his needs did change materially, as DRC correctly states, "Teams meet regularly to develop and update plans to ensure that each consumer will best advance and maximize his or her life in the least restrictive environment." Regular Interdisciplinary Team (IDT) meetings for Michael or any other California consumer won't cease in light of the Appellate Court's decision. To the contrary, the Appellate Court's discussion speaks to the value of input from all IDT members and provides guidance on due process rights when team members disagree.

In closing, for the reasons stated above, VOR, CASHPCR, AMRA and CAPT respectfully request that this Court **deny** DRC and SARC's requests to depublish *In re Michael K., on Habeas Corpus* (June 22, 2010) (No. H034209). The decision, as published, provides important due process guidance and precedent to individuals with intellectual disabilities and their families across California.

Respectfully Submitted,

Tamie Hopp
VOR Director of Government Relations & Advocacy
On Behalf of VOR, CASHPCR, AMRA and CAPT

605-399-1624 direct
605-484-8300 cell
thopp@vor.net
www.vor.net

cc:

Mary O'Riordan, VOR Board Member (Larkspur, CA), moriordan@aol.com
Theresa DeBell, President, CASHPCR, debell.theresa@gmail.com
Georgia Yerby, President, AMRA, georgiayerby@att.net
Tony Myers, State President, CAPT, myerscapt@aol.com