

Congratulations to Disability Rights Idaho for success in obtaining a strong opinion and court order from a U.S. District Court requiring a coroner's office to release records to the P&A as part of an investigation into a suicide death at a psychiatric hospital.

The judge ruled that the County Coroner is 1) an investigative agency for purpose of the PAIMI Act records access provisions, 2) privacy laws do not bar the release of the records, and 3) that the P&A is the final arbiter of probable cause under the PAIMI Act. The court, however, declined to address the section 1983 claim raised by Disability Rights Idaho. Further information on the case is below.

The case is *In the Matter of Disability Rights Idaho Request for Ada County Coroner Records, Sonnenberg v. Disability Rights Idaho*, No. 14-cv-00369, 2016 WL 878484 (D. Idaho, March 7, 2016). The Department of Justice entered a statement of interest in the case.

District Court Orders Coroner to Release Records to Disability Rights Idaho

Disability Rights Idaho (DRI) obtained a court order requiring the Ada County Coroner, which covers Boise, Idaho, to release records regarding the suicide death of an individual involuntarily committed to a psychiatric hospital. *In the Matter of Disability Rights Idaho Request for Ada County Coroner Records, Sonnenberg v. Disability Rights Idaho*, No. 14-cv-00369, 2016 WL 878484 (D. Idaho, March 7, 2016). The U.S. District Court for Idaho rejected the argument that the Coroner was not an "agency charged with investigating incidents of abuse, neglect and injury," under the PAIMI Act and that privacy laws prohibited the disclosure. The court further held that DRI is the final arbiter of probable cause under the PAIMI Act and refused to review the probable cause determination.

In May 2014 DRI determined, based on records provided from the psychiatric hospital, that the suicide death of a patient may have been the result of abuse and neglect and requested the autopsy and other reports from the Ada County Coroner. *Sonnenberg*, slip op. at *1. The Coroner refused to provide the records, and filed an action in state court seeking a declaratory judgment that it was not required to provide the records, and that release of the records would violate the privacy rights of the patient, family members, and/or individuals who interacted with the patient. *Id.* DRI removed the case to federal court and filed a counterclaim under the PAIMI Act and 42 U.S.C. § 1983. *Id.* at *2. Both parties filed motions for summary judgment, while DRI filed several other motions. *Id.* at *1.

The Coroner argued first that it was neither a "facility" as defined in the PAIMI Act under section 10802(3), nor an "agency charged with investigating incident of abuse, neglect and injury . . ." under the PAIMI Act records access provisions of section 10806(b)(3)(A). *Id.* at *5. The Court easily dismissed the "facility" argument of the Coroner since DRI only sought the records based on the Coroner's status as an investigative agency. *Id.*

The court further rebuffed the argument of the Coroner that as an elected position, the Coroner does not fit within the common usage of the term "agency." *Id.* at *5 - *6. The court determined that the Ada County Coroner is an "administrative division of the government" following the unreported decision in *Wisconsin Coalition for Advocacy, Inc. v. Busby*, No. 02-c-871 (E.D. Wis., Sept. 24, 2003) in which a coroner was held to be an agency under the PAIMI Act. *Sonnenberg*, slip op at *5 - *6. Ruling the elected nature of the office non-dispositive,

the court pointed to the statutory authority granted the Coroner, the ability of the county government to set the pay of the Coroner staff and of the county commissioners to remove the Coroner, and a decision of the Idaho Supreme Court as support that the Coroner administers business for the county. *Id.* at *6. The court thus held that the dictionary definition of “agency,” along with the legislative intent and clear terms of the PAIMI Act, includes the records held by the Coroner. *Id.* at *6 - *8.

Citing a long list of cases, the district court next rejected the assertion that state and federal privacy laws prohibit the Coroner from releasing the records. *Id.* at *8 - *10. First, the PAIMI Act in section 10806(b)(2)(C) expressly preempts state privacy laws, *id.* at *8, and second the “strict statutory requirement [in the PAIMI Act] that DRI keep any records confidential defeats any alleged privacy concerns raised by the Coroner.” *Id.* at *9.

The court also determined that DRI satisfied the PAIMI Act requirement to obtain the records, namely the lack of a need for guardian authorization and a finding of probable cause of possible abuse or neglect. The court responded to the suggestion of the Coroner that DRI required guardian approval for release of records that the Coroner in fact holds the burden to establish the existence of a guardianship for which it offered no evidence. *See id.* at *10 - *11. Nevertheless, even if such a guardian existed, under Idaho law the guardian authority terminates on death rendering any consent to authorize release of the records “ineffective and unnecessary.” *Id.* at *11.

More significantly, the court continued a line of cases holding that under the PAIMI Act the P&A is the final arbiter to determine the existence of probable cause that an individual with a mental disability was subjected to abuse and neglect. *Id.* at *11 - *12. The court stated that “[f]ederal cases are clear that the P&A is the final arbiter of probable cause, and that an entity may not second-guess the P&A’s probable cause determination in order to withhold records.” *Id.* at *11. The court further refused to accept the invitation of the Coroner to review DRI’s probable cause determination, stating “[t]he Coroner does not provide any authority to support its contention that the Court is the final decision-maker regarding probable cause. Moreover, cases interpreting PAIMI have repeatedly held that a P&A’s probable cause determination does not require judicial review.” *Id.* at *12.

Finally, the court refused to consider the ability of DRI to pursue a cause of action under section 1983 for the failure of the Coroner to guarantee a federal right. *Id.* The court noted the absence of direct controlling authority on the issue, and cited a Seventh Circuit decision which also refused to address a section 1983 cause of action since a cause of action exists under the PAIMI Act. *Id.* (citing *Indiana Prot. and Advocacy Services v. Indiana Family and Social Services Admin.*, 603 F.3d 365, 380 (7th Cir. 2010)).

David T. Hutt, National Disability Rights Network