In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 05-1399V

Filed: 22 April 2009

KIMBERLY WARFLE, a minor, by and through her mother and next friend, MELISSA GUFFEY,	*	
Petitioner,	*	**PUBLISHED**[1]
v.	*	
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	*Attorneys' Fees; General Order #9 Statement*
Respondent.	*	

ORDER

The Court convened a status conference in the above-captioned case on 2 April 2009, upon the filing of Respondent's motion to suspend proceedings and Petitioner's motion for a finding of compliance with General Order #9.[2]

Respondent had moved to suspend proceedings based upon a potential controversy of custody and Petitioner's standing to represent Kimberly. Petitioner filed materials sufficient to satisfy Respondent's query, and, by the agreement of the parties, that motion was **rendered moot**.

Petitioner's motion was rooted in an application for interim attorneys' fees made by Petitioner, which Petitioner herself had not anywhere endorsed by written execution. In fact,

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[1] This Order will be published and posted to the Court of Federal Claims website. Therefore, Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), she has 14 days from the date of this Order within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

[2] That Order sets forth, in part,

> [T]he court **shall** require in **all** future applications for fees and costs a statement signed by **petitioners and counsel** which clearly delineates which costs were borne by counsel and which costs were borne by petitioners, including the amount of any retainer that has been paid (*emphasis in original*).

Petitioner herself had not executed a statement delineating costs borne between client and counsel, as required by the plain language of General Order #9.

Petitioner argued that the requirements of the Order were met with regard to their underlying *purpose*, and therefore did not require actual compliance with the Order's plain wording. No ambiguity was demonstrated, and the Court was not persuaded.[3] Petitioner argued that other members of this bench have made exceptions for "good faith compliance" even where actual compliance was lacking. That may well be the case, but such exceptions are certainly not binding here, whereas, on its face, the General Order is. Wherefore, Petitioner's motion is **denied**. As the interim fee application is incomplete without the requisite components mandated by General Order #9, the time for Respondent's response thereto has not yet begun to run.

Furthermore, the parties are yet in the process of briefing the issue of entitlement, following the entitlement hearing previously convened. The Court amended the briefing schedule as follows:

Respondent **shall file** a responsive closing brief on or before **5 May 2009**; and

Petitioner **may** file a surresponsive reply brief, provided she does so by **19 May 2009**.

No pending status conference was scheduled, but one may be had at the request of either party. The Court may be reached via my law clerk, Isaiah Kalinowski, Esq., at 202-357-6351.

IT IS SO ORDERED.

Richard B. Abell
Special Master

[3] A court's "inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) "Chief Justice Marshall in 1805 stated the principle that definitively resolves this case nearly 200 years later: 'Where a law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction.'"*United States v. Fisher*, 2 Cranch 358, 399, 2 L. Ed. 304. *See also* A. Scalia, A MATTER OF INTERPRETATION 18-23 (1997); A. Scalia, "The Rule of Law as a Law of Rules," 56 *U. Chi. L. Rev.* 1175, 1185 (1989).