

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 3:12CV59-JAG
	)	
v.	)	<u>Motion</u>
	)	
COMMONWEALTH OF VIRGINIA,	)	
	)	
Defendant,	)	
	)	
PEGGY WOOD, et. al.,	)	
	)	
Intervenor-Defendants	)	

**DISABILITY LAW CENTER OF VIRGINIA'S MOTION FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF IN SUPPORT OF UNITED STATES' STATEMENT OF  
ISSUES AND MOTION FOR COURT - ORDERED SCHEDULE**

The disAbility Law Center of Virginia ("dLCV") respectfully renews its motion to file a brief as *amicus curiae* in support of United States' Motion for Court - Ordered Schedule and provide additional information regarding the status of the Commonwealth of Virginia's compliance with the provisions of the Settlement Agreement, for which a formal hearing is scheduled on January 12, 2015. dLCV is the designated protection and advocacy system for the Commonwealth of Virginia. VA Code § 51.5-39.13. The predecessor organization to dLCV, the Virginia Office for Protection and Advocacy ("VOPA"), previously participated as *amicus* in this litigation. As the protection and advocacy system, dLCV can assist the Court to ascertain the need for stricter compliance standards to ensure timely implementation of the Settlement Agreement. A copy of the proposed brief is attached as Exhibit A to this Motion.

## I. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT AMICUS CURIAE BRIEFS

Federal district courts possess the inherent authority to accept *amicus* briefs. *In re Bayshore Ford Truck Sales, Inc.*, 471 F. 3d 1233, 1249 n. 34 (11th Cir. 2006) ("[d]istrict courts possess the inherent authority to appoint 'friends of the court' to assist in their proceedings.") Additionally, the district court possesses "broad discretion" to accept *amicus* briefs. *Tafas v. Dudas*, 511 F. Supp. 2d. 652, 659 (E.D. Va. 2007). *Amicus* briefs can be permitted in district court cases where the *amicus* possesses "a special interest in the subject matter of the suit." *Bryan v. Better Business Bureau of Greater Maryland, Inc.*, 923 F. Supp. 720, 728 (1996). To permit parties to appear as *amicus curiae* "may be advisable where third parties can contribute to the court's understanding" of the issues involved in this case. *Id.*, *Harris v. Pernsley*, 820 F.2d 592, 603 (3d Cir. 1987). This authority supports the Court's exercise of its discretion to accept dLCV's *amicus* brief.

## II. DLCV HAS BOTH A SPECIAL INTEREST AND CAN ASSIST THE COURT'S UNDERSTANDING OF THE CURRENT STATUS OF THE SETTLEMENT AGREEMENT

dLCV is a non-profit agency designated by the Commonwealth of Virginia to provide protection and advocacy services for the Commonwealth of Virginia. Va. Code § 51.5-3913. dLCV previously operated as an independent state agency, the Virginia Office for Protection and Advocacy. As the designated protection and advocacy system, dLCV receives federal funds under several federal statutes including the Developmental Disabilities Assistance and Bill of Rights Act ("DD Act"). See, *Virginia Office for Protection and Advocacy v. Stewart*, 563 U.S. 247 (2011) (describing the operation of the protection and advocacy system). Under the DD Act, a state must establish a protection and advocacy system that can conduct investigations, monitor, and provide advocacy and legal representation to persons with developmental disabilities. 42

U.S.C. § 15043. Protection and advocacy agencies have been described as serving "a whistleblower, ombudsman, watchdog, advocacy, and 'private attorney general' role." *Indiana and Protection Services v. Indiana Family and Social Services Admin*, 603 F.3d 365, 383 (7<sup>th</sup> Cir. 2010) (Posner, J. concurring). In its mandated protection role, dLCV seeks to assure the safety of people with disabilities. In its mandated advocacy role, dLCV seeks to assure the rights of people with disabilities. Because of its mandate to provide protection and advocacy services under federal and state law, dLCV has a special interest in assuring that Virginia complies with the provisions of the Settlement Agreement on behalf of Virginians with intellectual and developmental disabilities.

In accordance with its mandate and authority under federal state and law, dLCV conducted monitoring, investigation, and advocacy activities at state operated facilities, community residential facilities that participate in the Medicaid waiver program, day programs, and privately operated mental health facilities for children and adults. Therefore, dLCV has been able to observe and assess Virginia's compliance with the Settlement Agreement and its effect on people who receive or qualify for services under the Medicaid Waiver program but have not been in state operated training centers. dLCV's work in institutional settings, including the Commonwealth Center for Children and Adolescents and other psychiatric residential treatment facilities, enables us to provide information to this Court about how both adults and children with intellectual and developmental disabilities become patients at state and privately operated hospitals.

dLCV drew from its monitoring and advocacy activities to provide information exemplary of the issues identified by the United States and the Independent Reviewer and believes this information will help the Court assess the need for a court ordered implementation

schedule. Therefore, dLCV respectfully requests the Court's leave to file the brief as *amicus curiae*.

Respectfully submitted and DATED this 29<sup>th</sup> day of December 2015,

\_\_\_\_\_/s/\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of December, 2016, I electronically filed the forgoing with the Clerk of Court using the CM/ECF system, which will send a Notice of such Filing (NEF) to the following:

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