

OFFICE OF SPECIAL MASTERS

No. 05-1025V

September 20, 2006

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VIRGINIA G. MOORE, parent of \*  
ROY S. MOORE, a minor, \*

Petitioner, \*

v. \*

SECRETARY OF THE DEPARTMENT OF \*  
HEALTH AND HUMAN SERVICES, \*

Respondent. \*

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No unethical influence from  
law clerk; petitioner's objections  
to Order of September 19, 2006  
interpreted as motion to redact  
which is granted

**ORDER**

The undersigned has read petitioner's e-mail dated today and filed it by my leave in another Order dated today. In her e-mail, petitioner expresses her outrage that the undersigned intended to post the Order of September 19, 2006 electronically (as the E-Government Act of 2002 requires) unredacted unless petitioner filed a motion to redact. The undersigned interprets petitioner's e-mail dated today as a motion to redact. The Order of September 19, 2006 will be posted electronically under the caption: Jane Doe, parent of John Doe, a minor v. Secretary of Health and Human Services.

Petitioner states in her e-mail that the undersigned's law clerk's working for the undersigned is unethical because the law clerk's parents run a pharmaceutical company (located

in Toronto, Canada).<sup>1</sup> Petitioner quotes the undersigned's law clerk's description of responsibilities on her resumé as "Write draft opinions and orders for cases." These draft opinions are solely for attorney's fees and costs. Drafts of attorney's fees decisions have nothing to do with whether petitioners win their cases by proving vaccine injury.

The orders that the undersigned's law clerk writes are routine orders setting status conferences, extending deadlines, and other mundane matters. Any order, such as the present one, which deals with substantive issues, the undersigned writes herself.

As for the Federal Judicial Center's pamphlet statement petitioner quotes in her e-mail that "law clerks are in a unique position since their work may have direct input into a judicial decision," this applies to the undersigned's law clerk only in attorney's fees decisions and, even in those areas, where a decision has to deal with a substantive matter, the undersigned does not have her law clerk write even a draft of that. See, for example, Baker v. Secretary of HHS, No. 99-653V, 2005 WL 589431 (Fed. Cl. Spec. Mstr. Feb. 24, 2005) (awarding attorney's fees and costs, reducing award of fees to expert who had not explained high number of hours and hourly fees satisfactorily). The undersigned wrote Baker without a draft from her law clerk because it involved a number of important issues that the undersigned felt could not be delegated. Most attorney's fees decisions, on the other hand, deal solely with the number of hours, the work entailed, and the hourly rate of the attorneys plus costs.

The undersigned does not rely upon her law clerk to analyze her vaccine cases, to write her vaccine liability and damage decisions, or to make up her mind for her. The undersigned's

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<sup>1</sup> The undersigned's law clerk's parents do not manufacture vaccines. They manufacture controlled time release oral drugs.

law clerk's responsibilities are to speak to counsel and/or pro se plaintiffs on matters dealing with scheduling, to set up status conferences, to file electronic opinions on the court's electronic docket, to help formulate attorney's fees and costs decisions, and to keep statistics on the cases decided, disposed of, in damages, and pending each month. The undersigned reads all medical records filed in cases herself, makes her own notes on the medical records filed in cases, conducts all conferences and hearings herself in her cases, and writes all her own decisions on liability herself. There is no influence on the undersigned from any person, company, or corporation in deciding these cases.

Petitioner also criticizes the undersigned for misinterpreting the medical records that she has previously filed that recount her son's visits to doctors and hospitals. The undersigned invites petitioner to compare the descriptions of the contents of these medical records in the Order of September 19, 2006 with the medical records themselves and then determine if there are any errors in the Order of September 19, 2006. The undersigned is aware that petitioner contests the contents of the medical records but, unless petitioner files other medical records which support petitioner's assertions, the undersigned is forced to rely upon what petitioner filed.

Petitioner states in her e-mail that she is withdrawing from her suit. The undersigned will wait until October 10<sup>th</sup>, the deadline the undersigned set for respondent to inform the court whether respondent will attempt a litigative risk settlement (even though petitioner has not filed complete medical records, the records she filed do not support her allegations of a vaccine injury lasting more than six months, and she has not filed an expert medical report), before determining whether to dismiss this case.

In the eventuality of a dismissal, the undersigned calls to petitioner's attention that the Vaccine Act requires petitioner to file a Notice to Elect to File a Civil Action for Damages within 90 days of the date of the court's final judgment or petitioner will not be able to sue whatever party petitioner is interested in suing in state or federal courts. 42 U.S.C. § 300aa-21(a)(2).

**IT IS SO ORDERED.**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Laura D. Millman  
Special Master