

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

G., parent and next friend of K., et )  
al., )

Plaintiff, )

vs. )

STATE OF HAWAII, )  
DEPARTMENT OF HUMAN )  
SERVICES, et al., )

Defendant. )

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G., parent and next friend of K., et )  
al., )

Plaintiff, )

vs. )

STATE OF HAWAII, )  
DEPARTMENT OF HUMAN )  
SERVICES, et al., )

Defendant. )

CIV. NO. 08-00551 ACK-BMK  
CIV. NO. 09-00044 ACK-BMK  
(Consolidated Cases)

ORDER GRANTING DEFENDANTS’ MOTION FOR RETURN OF  
DOCUMENTS SUBMITTED FOR *IN CAMERA* INSPECTION

Before the Court is Defendants State of Hawaii, Department of  
Human Services and Lillian B. Koller, Director, State of Hawaii, Department of

Human Services's (hereinafter "Defendants") Motion For Return Of Documents Submitted For *In Camera* Inspection.<sup>1</sup> A hearing on this Motion was held on June 2, 2009.<sup>2</sup> After careful consideration of the Motion, the memoranda supporting and opposing the Motion, and the arguments of the parties, Defendants' Motion is GRANTED and the Court will return said documents to the Counsel for the State of Hawaii.

### ANALYSIS

Counsel for Plaintiffs was sent certain documents related to the above captioned consolidated cases by a third party. Defendants contend that the documents come from the Department of Human Services for the State of Hawaii and were improperly removed from the offices of the Department of Human Services. (Def. Mot. 1-2.) Defendants further aver that an individual who is believed to have been responsible for removing the documents has been identified, and that an investigation is ongoing. (Decl. of Dr. Kenneth Fink 2-3.) Counsel for Plaintiffs represents that, while he knows the identity of the person who sent him the documents, he is unaware of the source of the documents. Counsel for

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<sup>1</sup> Defendants United States Department of Health and Human Services and Charles E. Johnson, Acting Secretary, United States Department of Health and Human Services, and intervenors United Healthcare Ins. Co. and Wellcare Health Insurance of Arizona joined in Defendants' Motion.

<sup>2</sup> Defendants styled their request as an *ex parte* motion. However the substance of the motion is not properly dealt with on an *ex parte* basis. The Court therefore set a hearing on the Defendants' Motion.

Plaintiffs argues that many of the documents may have been obtained by legitimate means. (Pl. Opp. 2.)

The Court stresses that there is no evidence that Plaintiffs' counsel acted improperly with respect to these documents. Nonetheless, it is more likely than not that the documents came from the offices of the Department of Human Services and that they were removed by an individual without the authority to do so. The situation may be analogized to that of inadvertent disclosure of privileged material. Fed. R. Civ. P. 26(b)(5)(B); See also Fed. R. Evid. 502(b). Therefore, the proper course is for these documents to be returned to the State. Plaintiffs may then utilize the discovery process under the Federal Rules of Civil Procedure to gain access to any documents not protected by privilege.

#### CONCLUSION

For the foregoing reasons, Defendants' Motion For Return Of Documents Submitted For *In Camera* Inspection is GRANTED. The Court will return the documents to Counsel for Defendants.

IT IS SO ORDERED.

Dated: Honolulu, Hawaii, June 9, 2009



/S/ Barry M. Kurren  
Barry M. Kurren  
United States Magistrate Judge

G., parent and next friend of K., et al. v. State of Hawaii Department of Human Services, et al., CV 08-00551 ACK-BMK; G., parent and next friend of K., et al. v. United States Department of Health and Human Services, et al., CV 09-00044 ACK-BMK; Order Granting Defendants' Motion For Return Of Documents Submitted For *In Camera* Inspection