



TO: SDMC Panel Members

FROM: Greg Jones, Sr. Attorney
Counsel's Office

DATE:

SUBJECT: Communication between Panel Members and MHLS Attorneys Outside of Hearings

On occasion, the questions arise as to whether panel members should communicate with the Mental Hygiene Legal Service attorneys and/or other interested parties outside the actual SDMC hearing.

Because SDMC panel hearings are quasi-judicial in nature, many of the rules of conduct that apply in court have the same salutary purpose of preserving fairness and propriety in SDMC hearings. Those rules for judicial and quasi-judicial bodies include the prohibition of communications between the decision-makers and all interested parties unless all parties are on notice and have an opportunity to appear. The roles of individual panelists are similar to that of a judge, i.e., panelists are impartial decision-makers who should observe standards or even appearances of impartiality and fairness so that the integrity and independence of the SDMC program may not be questioned by any of the parties of the hearing.

With respect to communications with MHLS attorneys or other interested parties, the rules of conduct that should be followed are:

- Panelists should avoid impropriety, or the appearance of impropriety, by declining to discuss any aspect of a case outside the hearing room; this avoids improper influence by any party. Additionally, if any one panel member makes statements, it might appear that he or she is speaking for the whole or majority of the panel. Panel decisions are collective in nature and such comments by individual panel members would not only undermine the panel as a whole, but might also be used against the panel if the case is subsequently appealed to court.
- If a panelist receives a telephone call from the patient's facility, the MHLS attorney, or any other party, the panelist should courteously decline to speak about the case and refer the call to the Commission's SDMC staff. Because SDMC staff members are not involved in the

decision-making process and are required to assist in the administration of the program, they may communicate with such parties. If the panel wishes to receive more information from a party, the panel should advise the SDMC staff who will arrange for the information to be presented, either in person at the SDMC hearing, or by telephone conference call.

- In the event of litigation, the panel, its members, and/or the SDMC program will be represented by the Department of Law or appointed counsel. Pending such litigation and appointment of counsel, the Committee members have the attorneys within the CQC Counsel's Office to assist them and to assist in the administration of the SDMC program.

Any questions should be directed to SDMC staff at 518-549-0328.