

SCOTT M. KENDALL, SBN 166156
Law Offices of Scott M. Kendall
8788 Elk Grove Blvd., Bldg. 1, Suite I
Elk Grove, CA 95624-1768
(916)685-7700
(916) 686-1074 fax

Attorney for Plaintiff PLANS, INC.

FILED

JAN 14 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIF"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PLANS, INC.,

Plaintiffs,

vs.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT, TWIN RIDGES ELEMENTARY
SCHOOL DISTRICT, DOES 1-100,

Defendants.

Case No.: CIV. S-98-0266 FCD PAN

DECLARATION OF SCOTT M. KENDALL IN
OPPOSITION TO MOTION FOR SANCTIONS

Date: January 21, 2003

Time: 9:00 a.m.

Place: Courtroom 25

I, SCOTT M. KENDALL, do hereby declare:

1. I am the attorney of record for the plaintiff PLANS, INC.
2. This declaration is being filed one day late due to calendaring error, failing to recognize that Martin Luther King Jr.'s Birthday caused this opposition to be due on January 13, 2004, rather than today, January 14, 2004.
3. I have been diagnosed with and suffering from significant mental illness over the last two years. Immediately prior to its diagnosis and treatment, I had completely failed to function professionally for several months, resulting in the effective closure of my office. The phones were disconnected, staff was gone and unpaid, and I was about to be lose my home. I decided to contact the California State Bar to advise them I could not continue to practice. At that time, I learned that the State Bar had started a new program called Lawyer's Assistance Program (LAP).

4. Lawyer's Assistance Program is a State Bar Program is a program for attorneys that are suffering from addictions or mental illness. While most participants are in the program as a result of bar complaints and probation, I self-referred. After a careful screening process, I was accepted into the program on the basis of mental illness.

5. As part of the process of admission into the LAP program, I immediately saw a psychiatrist, Laurie J. Peters, M.D. I was diagnosed with major clinical depression, anxiety disorder, and obsessive-compulsive disorder, and began a course of medication.

6. I responded extraordinarily well to the medication, and after about three months of treatment I was able to restore my practice to full functioning without receiving any bar complaints.

7. In March of 2003, as I was doing so well, I requested that my doctor take me off the medication. The reason for this request is that the medication does have significant side effects for me, including difficulties in sexual performance and causing frequent urination, which affected my ability to sleep at night. Dr. Peters agreed, and I initially performed well without medication.

8. Approximately two months after I was no longer taking the medication, I relapsed. Unfortunately, I did not recognize that I relapsed until November, with the intervention of LAP. During that time, two civil cases were dismissed for discovery violations.

9. Upon being confronted with the fact that I relapsed, I immediately sought the help of Dr. Peters, and I resumed medication. In the last several weeks, Dr. Peters has increased my medication, and is also evaluating me for the possibility of bi-polar disorder, which may require additional medication. Attached as exhibit "A" is a true and correct copy of Dr. Peter's Declaration in one of the civil matters that was dismissed, describing my medical difficulties.

10. After discovering that I had relapsed, LAP put into place some prophylactics to mitigate any continuing problems, including a work site monitor, and giving my paralegal the freedom to disclose to the monitor any serious compliance problems.

11. In this instance, the prophylactics worked, although they were delayed because of the holidays, and my paralegal having the flu during the first week of January. On January 9, 2004, my paralegal advised the work site monitor that I had not complied with this court's order, and that I was facing terminating sanctions. The work place monitor, David W. Holochuck, Esq., immediately

contacted my LAP case worker, Pam Poley, and they, along with another attorney, intervened by confronting me with these issues on January 12, 2004, at 7:30 a.m.

12. Up to that time, I had not read this court's order, nor the motion that was filed by defendants. As I now understand my illness, I have the ability to compartmentalize and completely ignore certain trouble areas.

13. Since Monday, however, I have been diligently working on preparing the discovery responses, and was disheartened to learn from this court's clerk that the opposition was due yesterday, and that the matter would be deemed submitted, and that I need not appear.

14. Although my first reaction, as might be expected, was to put my head in the sand again, with some emotional and mental difficulty, I have prepared this declaration, and continue to complete the discovery, which will be served tomorrow morning upon defendants.

15. I further note that, as a general rule, I do not continue to practice in civil litigation, and have successfully assigned most of my continuing cases to other attorneys during my recovery. I do practice in the area of family law, which has a completely different dynamic.

16. Unfortunately, because this is a pro bono case, with a five year history, I am not in a position to be easily relieved of my responsibilities herein. I am, however, seeking assistance, as this is a public interest case.

17. With regard to the issue of prejudice, the issues in the case remain the same, and defendants will need to disclose the same type of experts as they did before the appeal. As a practical matter, plaintiff does not have any new significant evidence from its own sources, but rather is in the process of discovering new evidence through defendants, as plaintiffs evidence of defendants' violations of the U.S. Constitution were based upon facts that occurred in 1998 and 1999.

18. I note that other than this recent conduct in this case, I do not have a history in this matter of filing untimely documents in this case's five-year history. I would request that this public interest matter be decided on the merits, after all of the work that the plaintiffs and defendants have put into this case.

19. I am ashamed to be in this position, and have no explanation that I can offer to explain my conduct in a rationale way. I believe and hope that with continued medication and close monitoring

by LAP, I will never be in this situation again. I request the forgiveness of my colleagues and this court for my conduct, and would look forward to the opportunity of making amends.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed on the 14th day of January, 2004, at Elk Grove, California.

SCOTT M. KENDALL