

# **LaLonde v. Eissner**

## **Massachusetts Protects Court Appointed Expert Witnesses**

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Previously, I have reported on two important cases involving the relationship of the judiciary and expert witnesses. In *Tolisano v Texon*, the New York State Court of Appeals, the State's highest court, ruled that there existed no doctor-patient relationship when a forensic evaluation is performed (1,2). In so doing, the court acted to protect expert witnesses and finally reaffirmed a concept which experts have consistently maintained. In *McNamara v. Honeyman* (3,4) the Massachusetts Supreme Judicial Court, that State's highest court, ruled that if a physician defendant was a public employee then he/she would be protected from not only negligence but from gross negligence as well.

I am pleased to add the case of *LaLonde v. Eissner* (5) to this growing list of case law which helps to articulate the role of a forensic psychiatrist and the protection's to be afforded in the conduct of our work. This may be the first time a State's highest court has granted judicial immunity to a forensic psychiatrist performing an evaluation in the absence of a specific court order for the evaluation.

### The Case

In the context of a visitation dispute, the probation department was ordered by the Probate Court to conduct an investigation and to arrange for a psychiatric evaluation of the LaLonde family. Pursuant to this order, the probation department engaged Dr. Eissner who interviewed the family and arranged for separate psychological testing for the minor child. Mr. LaLonde was made to bear the cost of the evaluation, pursuant to the Probate Court order. The mother and child brought action against Dr. Eissner alleging that he was negligent in performing his evaluation and that as a result continued contact by the father was allowed which brought harm to the child. The Superior Court granted summary judgment in favor of Dr. Eissner and Mother and child appealed. The case was transferred directly to the Supreme Judicial Court on its own motion.

Dr. Eissner asserted that as he was appointed by the probation department in accordance with a Probate Court order to the probation department that he was entitled to quasi-judicial immunity. The Supreme Judicial Court found that the trial court did not err in issuing a summary judgement noting that the plaintiffs dispute that there was a Probate Court order and that pursuant to this order the matter was referred to Dr. Eissner. Rather,

the plaintiffs argued the issue of the scope and purpose of the examination as well as the relationship between Dr. Eissner and the Probation Department. Here, the Trial court ruled that no specific facts establishing a triable issue were found.

The Supreme Judicial Court identified the salient issue as whether a psychiatrist chosen by the probation department to conduct a court ordered evaluation is entitled to quasi-judicial immunity and not to consider the issues surrounding the manner in which the actual evaluation was conducted.

### Supreme Judicial Court of Massachusetts

In a short but well referenced decision the court begins by reminding that judges are exempt from liability for "any judgement or decision rendered in the exercise of jurisdiction vested in him by law." (5) It continues to reflect that the doctrine of absolute judicial immunity first arose in the common law has been extended to persons other than judges performing judicial or quasi judicial functions. Courts have extended this immunity in recognition of the integral part such people play in the judicial process and the need for these people to act freely without the threat of a law suit. When acting under a judge's order these people enjoy the same absolute immunity as does the judge. The court further recognizes that barring such protection it would be difficult to obtain experts to assist the court in conducting evaluations and would enhance the chances of obtaining the disinterested objective opinion that the court seeks.

The plaintiff argued that potential liability acts to discourage inadequate and negligent evaluations and therefore it is in the public interest not to grant quasi-judicial immunity to persons such as Dr. Eissner. The Supreme Judicial Court addresses this issue by noting that not only was an evaluation report submitted but that cross-examination also assured the opportunity to address the issue of the manner in which the evaluation was conducted. In addition, appellate review is always available as it was in the case at bar.

The fact that Dr. Eissner was not specifically designated by the judge's order but rather by the probation department pursuant to a court order suit does not change the opinion. Accordingly, the court finds that "persons appointed to perform essential judicial functions are entitled to absolute immunity." (5, at 542)

### Comment

The LaLonde decision will have a substantial impact on the performance of forensic evaluation in Massachusetts and if its rationale is followed, throughout the country. Obtaining forensic evaluations in the public sector, particularly in family court issues, has been difficult. Although court clinics exist in some parts of the country all are overburdened. The assurance of absolute immunity could go a long way towards getting more psychiatrists to participate in this underserved and needy area.

The court also dealt with the issue of payment for an evaluation in a single paragraph noting that "because the Probate Court judge ordered Stephen LaLonde to pay the cost of Dr. Eissner's services, such payment could not in and of itself vitiate immunity that would otherwise exist." (5, at 540)

Immunity from negligence is a delicate issue. In this case, psychiatrists acting in a quasi-judicial role, have been afforded a great degree of protection. Regardless of such protection, we must continue to perform our services in accordance with the highest professional and ethical standards. Only through such conduct can our trust be preserved.

1. Tolisano v. Texon, 550 N.E. 2d 450, 551 N.Y.S. 2d 197 (1989)
2. Kaye, N.: (1990). Tolisano v. Texon: New York State Protects Expert Witnesses. Newsletter of the American Academy of Psychiatry and the Law, 15:3, 88-89.
3. McNamara v. Honeyman, 406 Mass. 43 (1989)
4. McNamara v. Honeyman: Massachusetts Protects Psychiatrists. Newsletter of the American Academy of Psychiatry and the Law, 15:1, 9.
5. Lalonde v. Eissner, 539 N.E. 2d 539 (1989)