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January 19, 2016

Christopher M. Perry  
Law Offices of Brendan J. Perry  
& Associates, P.C.  
P.O. Box 6938  
Holliston, MA 01746

Dear Attorney Perry:

I am writing to respond to your December 4, 2015 letter to Governor Baker concerning unpaid judgments owed by six former Department of Mental Health employees to the estate of your client, Jason Davis. We have looked into the history of this matter. In 1998, a jury found the former employees liable under State and Federal law of intentionally depriving Mr. Davis of his civil rights and awarded Mr. Davis \$100,000 in compensation for his injuries and imposed substantial punitive damages in addition. The Commonwealth itself was not a defendant in the case, and our review does not indicate that the Commonwealth was ever found negligent in supervising the former employees. It appears that in 2014 Governor Patrick twice acted to prevent the Commonwealth from paying a substantial portion of these judgments.

As you know, by law the Commonwealth is prohibited from paying judgments owed by State employees who have been found to have violated a person's civil rights by acting outside the scope of their duties and in a grossly negligent, willful, or malicious manner. See G. L. c. 258, § 9. In effect, the law makes the State responsible only for acts that an employee undertakes on behalf of the State itself and not for acts that the employee undertakes on his or her own bad motives and outside the employee's responsibilities to the State. The rule is essentially the same for private employers and is intended to ensure that employees do not believe themselves free to act unlawfully without fear of personal consequences. Consequently, unless the Legislature acts to explicitly override this general prohibition and appropriate funds for these outstanding judgments, the Commonwealth is unable to pay any part of these awards. We are not aware of any currently pending legislation that would do this.

As the facts of your client's case demonstrate, the legal rule that controls here unfortunately cannot guarantee that an employee found liable for his or her own bad acts will be able to pay whatever judgment a court may award. It would be open to the

Legislature to determine based on all of the facts that the outcome in this case warrants suspending the statutory prohibition on paying judgments entered against individual State employees. The Governor would consider whatever the Legislature might choose to enact in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael Kaneb", with a long horizontal line extending to the right.

Michael A. Kaneb  
Deputy Legal Counsel