

**Health & Human Services Committee**  
**March 26, 2019**  
**Minutes**

**Members Present:** Committee Chair John Peck, Legislators Allen Drake, James Nabywaniec, Jeremiah Maxon, Robert Ferris, Anthony Doldo, Board Chair Scott Gray

**Others Present:** Legislators Robert Cantwell, William Johnson, Philip Reed, Daniel McBride, and Patrick Jareo, County Attorney David Paulsen, County Administrator Robert Hagemann, Deputy Administrator Sarah Baldwin, Information Technology Director and Conf. Asst. for Fiscal Affairs Gregory Hudson, Office for the Aging Interim Director Louise Haraczka, Community Services Director Timothy Reutten, Planning Director Michael Bourcy, WWN7 News Reporter Alex Valverde, Watertown Daily Times Reporter Abraham Kenmore, Confidential Secretary Jill Jones

Chairman Peck called the meeting to order at 6:00 p.m. and offered privilege of the floor, however no one presented wished to address the Committee

County Attorney David Paulsen introduced Joanne Cicala, Cicala Law Firm, relating that she represented Jefferson County about 10 years ago when she was part of the law firm Kirby McInerney in an Average Wholesale Pricing (AWP) lawsuit against pharmaceutical companies who were over pricing drugs that were sold to Medicaid recipients, and Jefferson County recovered hundreds of thousands of dollars in that case. He said she has now branched out and has a law firm of her own and represents several counties in other states for the opioid litigation, and she is here this evening to give a primer on how to proceed for the opioid litigation.

Ms. Cicala outlined her background and her time at Kirby McInerney where she developed a municipal practice to serve public clients. She represented the City of New York in four different litigations, and counties in the Medicaid fraud cases, she also represented the States of Iowa and Michigan in other pharmaceutical cases. She found this work very satisfying as she worked in the private sector, but took on corporate America when they engaged in egregious conduct. In the AWP lawsuits she had proof and successfully sued prescription drug manufacturing companies (brand manufacturers and generics) who were purposely lying to the government to inflate the prices that Medicaid would pay for drugs, thereby returning money to taxpayers. She felt this was her way of helping democracy, and therefore government, function the way it is supposed to. She took a break from practicing law after that time and was living in Texas.

In 2017 a number of New York counties contacted her because they considered getting involved in the opioid litigation, but she declined the representation as she was not practicing law at that time. Those discussions got her focused on the opioid litigation so she did extensive research and felt that tort lawyers who had filed cases were missing key components of how the opioid epidemic occurred. They were blaming the prescription drug companies (Purdue and

generics) and they were starting to go after distributors, but they were not focused on the big pharmacies, or pharmacy benefit managers. She felt each component or step in the distribution chain should be a necessary party to opioid litigation. She launched her firm, started talking to clients and is now representing Webb County, Texas and 45 municipalities in Virginia and she has filed suits against each of the entities in the chain that she mentioned.

She said the start of opioid litigation is to focus on the origin of the epidemic. She said it is a singular event in our country, and the fact that communities are trying to deal with the consequences of this widespread addiction is not accidental. The plan to increase opioid utilization was hatched by Purdue Pharma back in the early 2000s. She said there is evidence in the form of communications between the most senior leaders of Purdue, including members of the Sackler family, where they reveal, repeatedly, their objective to increase utilization. They didn't care if they are creating addicts along the way, they were doing it to make money. She said up until the late 1990s people understood opioids were highly addictive. Purdue Pharma spent millions and millions of dollars to change the perspective of the medical community, including the federal government, with regard to the risks associated with opioids. Their efforts were successful, but only because they had the cooperation of other participants in the drug distribution chain.

The distribution chain starts with the prescription drug manufacturers (Purdue and copy cat generics). Next are the wholesalers and distributors, (who have obligations under law to make certain reports when they see controlled substances moving in certain volumes and did not do that, or worse they lobbied state and federal governments to increase their reporting thresholds so they would not have to reveal the large amounts being distributed). Next are pharmacists who also had similar statutory and federal obligations but also turned a blind eye. Then doctors who were purposely writing scrips for people who didn't need them, and doctors getting paid off by drug companies who were "pill mills". The pharmacy benefit managers (PBM) allow the whole chain to operate by determining which drugs are reimbursed by insurance and which drugs are not. The formularies they set, or the list and rank of drugs that are approved for reimbursement, are the key; PBMs gave preferential treatment to the most addictive drugs and kept less addictive drugs off the formularies so they wouldn't be as readily available. Therefore, the possible defendant groups are: prescription drug manufacturers, wholesalers, distributors, pharmacies, pharmacy benefit managers, doctors and pill mills.

Thousands of municipalities across the country have filed lawsuits: states, counties, cities, and they all look different depending on the clients' preferences and the environment in which they are operating; there is no one size fits all to do this. Some are only suing drug manufacturers, some are suing drug manufacturers and wholesalers, some sue the whole line, right down to doctors and pill mills, some include pharmacy benefit managers, etc. In filing suit they understand that there is an epidemic, it is man made, not accidental, they are aware that there is blame to be shared among many different actors and some of that blame, if not all or most, resides with the corporate actors, and there is a community response. She said Jefferson County is coming to understand that this epidemic has impacted the community in a variety of ways (law enforcement, social services, education, first responders, etc.), but what do you do in response. She said litigation is unappealing to people, and county employees don't have the time

to gather the kinds of data needed to bring litigation, but the question begs; as a public servant what do you do when you learn of this sort of bad corporate behavior, what is the consequence, who holds those corporations accountable for the harm that they have done now and for the future; how do you abate the crisis, deal with prevention and treatment, and how do you reduce the flow of opioids in your community. She said it is hard to say what the consequences are for not litigating, however the benefit of participating in litigation is that you are putting pressure on the system to correct itself. An example of corrective pressure through litigation: in September, 2018 she filed a motion in federal court on behalf of Webb County, Texas for pharmacy benefit managers to change their formularies and cease giving preferential treatment to opioids, and to make sure they cover drugs for opioid use disorder, and less addictive pain medications. This isn't about money, it is about getting these drugs removed from the system. The action was very favorably received by the Court because it is seen as a tool to help correct the problem, and the court is now guiding them and the PBMs in negotiations in order to reach that injunctive relief they requested. Without participating in litigation that kind of activity is not possible.

The federal government has not filed any lawsuits, they have declared the opioid epidemic a national emergency and created a Task Force, and are looking at ways to deal with prevention, abuse and treatment moving forward, but they are not filing lawsuits against the participants. State attorney generals (AG) and local municipalities are who has filed lawsuits. Should Jefferson decide to file a lawsuit and hire her firm, she said her objective would be to address the particular concerns the County has with how this has impacted the community. What has it done to the labor force, police force, schools, social services, etc. and what would you like to see going forward that would be different. She said she could craft injunctive relief to address concerns in the community like she did for Webb County. She added that Purdue has recently settled with the state of Oklahoma for \$270,000,000, the majority of which will be used for prevention and treatment facilities in the state.

Ms. Cicala provided Committee members with a chart for Jefferson County Retail Opioid Prescribing Rate 2006-2017 (CDC) that showed a sharp increase in opioid prescriptions that more than doubled from 2014 - 2015 and those numbers have maintained since then. She said the consequences of that jump are supported by increases in other data she saw for Jefferson County, i.e. Emergency Room admissions, treatment admissions, overdose, deaths due to synthetic opioids, it is tracking the prescribing rate you see on the chart. She said every other entity that she represents the prescribing rate numbers tend to track the state and national trends, where Jefferson has a sharp uptick and it would be interesting to understand what occurred, it could be as simple as a data collection issue, or not.

In response to questions Ms. Cicala stated that none of the municipalities that she represents have named mom and pop pharmacies or doctors; if there have been specific acts by particular doctors they may have, but otherwise the locals are not involved, they are just doing their jobs. Some New York counties have recently added Rite Aid, CVS, Walgreens and Walmart to their cases, but to her personally the pharmacies are the least appealing defendant group for her. She would be working on a contingency fee basis which she felt was the most fair way to handle this type of lawsuit, and if there is no culpability on the part of the defendants, then she would not receive any money. There was lengthy discussion concerning the role,

responsibilities, and operations of PBMs in the drug distribution chain. County Attorney Paulsen advised that at the point when Jefferson County was ready to file suit, there would be discussions concerning which defendant groups to name. No other county in New York State has named PBMs as a defendant group, but Ms. Cicala recommended that Jefferson include PBMs to give the County more leverage. Because Jefferson is filing so much later than other counties, there may be differences when the lawsuit is settled and distributed. She could not share the direct evidence against any of the defendants because Jefferson County is not a party to the suit at this time. She felt the information that is publically available would be sufficiently compelling that the County would file suit, and she could get that information to legislators. Also advantageous would be for legislators to receive a copy of the Complaint her firm filed in Texas as it is based on extensive research that also can be disclosed, and allowed them to make good faith allegations regarding the conduct that has led to the epidemic. With regard to the FDA banning opioid use, she said the idea is not to take the opioid drugs off the market, it is to limit their use to the CDC issued guidelines; opioids for post surgery acute pain, active cancer care, palliative care/end of life only, not long term chronic pain.

County Attorney Paulsen said he needs to have a discussion with Attorney Cicala about what makes the most sense for Jefferson County in terms of choosing defendants, and the venue to file the suit, state or federal court, and what background she needs from County officials/ government in terms of discovery prior to filing. He said discussions also are needed to determine whether the whole Finance & Rules Committee would be making these decisions, or if a smaller group of legislators would be gathered to do that. Ms. Cicala said her firm has developed a majority of the allegations because they have been looking at this case for some time now, it would be a matter of gathering data particular to Jefferson County, which could be done in the short term. She could then prepare a pleading based on what legislators determine works best to seek meaningful relief for the effect the epidemic has had on Jefferson County. She said most counties have filed in New York State Court and they are all being grouped together and treated as one. Chairman Peck thanked Ms. Cicala for her informative presentation and expressed his appreciation for her appearing before the Committee tonight and fielding questions. He said at this point the County Attorney would be the conduit for any further discussions and decisions on this matter.

The Committee approved the minutes of the February Committee meeting as written.

Chairman Peck introduced a resolution amending 2019 County Budget relative to mental health programs and authorizing amended agreements in relation thereto and entertained a motion for consideration. A motion was duly made by Legislator Doldo seconded by Legislator Ferris and there being no discussion, the Committee agreed to sponsor the resolution as presented.

Chairman Peck introduced a resolution authorizing agreements with NYS Department of Education approved agencies for the provision of special education services for preschool children with disabilities and entertained a motion for consideration. A motion was duly made by Legislator Maxon seconded by Legislator Doldo and there being no discussion, the Committee agreed to sponsor the resolution as presented.

Chairman Peck introduced a resolution authorizing agreements and establishing rates for provision of related services in connection with the program for preschool children with disabilities and entertained a motion for consideration. A motion was duly made by Legislator Nabywaniec seconded by Legislator Drake and there being no discussion, the Committee agreed to sponsor the resolution as presented.

There being no further business of the Committee, on a motion by Legislator Maxon seconded by Legislator Doldo and unanimously carried, the meeting was adjourned at 7:55 p.m.

Sincerely,

A handwritten signature in blue ink that reads "Robert F. Hagemann, III". The signature is written in a cursive style with a large, stylized "R" and "H".

Robert F. Hagemann, III  
Clerk of the Board