

Protecting members' privacy

Suit against OIG moves ahead

After more than a year of delay, NALC and the APWU have won an important preliminary victory in their lawsuit against the Postal

Service and the Office of Inspector General (OIG) related to release of confidential medical information about employees.

In a ruling issued March 30, U.S. District Court Judge Denny Chin denied a motion by the defendants to dismiss the case. The suit had been held up pending the decision and will now proceed for consideration of the merits.

NALC President Bill Young expressed pleasure with the ruling, saying, "It will give us a chance to expose the lawlessness of an out-of-control OIG and to put an end to the violation of our members' privacy rights."

NALC and the American Postal Workers Union filed their joint suit January 17, 2008, in federal court in New York City, seeking to stop OIG agents from obtaining confidential medical information without employees' knowledge or consent.

The controversy first surfaced in September 2007, when NALC obtained a copy of a form letter used by OIG agents to demand that physicians and other health care providers disclose sensitive health information during investigations of alleged employee misconduct. The letter

tells the physician not to inform the patient—who could be a letter carrier, clerk or other postal employee—of the disclosure.

The NALC-APWU suit, the subject of the March 2008 *Postal Record* cover story, alleges that the practice violates federal law and regulations, as well as the right to privacy guaranteed by the U.S. Constitution. The complaint seeks an injunction requiring the Postal Service and the OIG to cease and desist.

Last June, the Service and the OIG filed a motion to dismiss. They asserted the unions lacked "associational standing" to sue on behalf of their members and also argued that the unions' complaints did not establish a violation of the law. In his ruling, Judge Chin rejected those arguments and upheld the unions' position.

"The [unions'] claim adequately alleges that OIG exceeds its authority by requesting protected health information directly from employees' health care providers without their knowledge or consent," he wrote. "Furthermore, the 'adverse effect' on the employees—necessary to state a Privacy Act violation...—is destruction of the confidentiality of the employees' protected health information and violation of the right to privacy...."

At a conference with the parties' attorneys on April 6, Judge Chin set a preliminary schedule for pre-trial discovery to be completed by July 10.

The lawsuit is not a class action in which individual employees can join. No money damages are being sought. ☒

