

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

DAVID MEEHAN

v.

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.

217-2020-CV-00026  
and all consolidated YDC and YDSU cases

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**THIS DOCUMENT PERTAINS TO ALL CONSOLIDATED YDC AND YDSU CASES**

**THIS DOCUMENT DOES NOT RELATE TO CONTRACTOR DEFENDANTS**

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**DHHS'S OBJECTION TO PLAINTIFF'S PROPOSED SECOND AMENDMENT TO  
CASE STRUCTURING ORDER OF AUGUST 15, 2024**

DHHS, by and through counsel, and hereby objects to the plaintiffs' counsels' proposal which requires the parties to prepare multiple cases (up to four cases at a time) for the same trial slot. In support of this objection, DHHS states as follows:

1. On January 27, 2025, the Court indicated its intention to require the parties to prepare the cases of two separate plaintiffs for every trial date set forth in its August 2024 "Case Structuring Order For Cases Assigned to Judge Schulman and Supporting Reasons" (hereinafter, "*Order*")<sup>1</sup>, beginning with the August, 4, 2025 trial and continuing through the August 2026 trial. The Court requested a proposal for proceeding in such a way. Plaintiffs' counsel has filed a proposal. DHHS objects to it.

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<sup>1</sup> The *Order* states that "the cases will be tried in docket number order, as set forth with specificity in the chart listing the presumptive and backup cases to be scheduled for jury trial in 2025 and 2026." *See Order* at 12.

2. The proposed trial schedule will place an unmanageable burden on DHHS. It would have the parties simultaneously prepare multiple cases for a single trial slot for all trial slots beginning in August 2025. For example, under the Plaintiffs' proposed order, in August 2025, the parties will be trying the case of either Gilpatrick or John Doe #1 (after having prepared both cases for trial), while simultaneously preparing three more plaintiffs for trial less than two months later, in September 2025 (John Doe #2, John Doe #6, and Jane Doe #4).
3. To prepare those five cases for trial (two for the August 2025 trial and three additional cases for September 2025 trial date), the parties will have had to complete fact and expert discovery, motion practice, mediation, and trial preparation for five separate plaintiffs – plaintiffs whose cases arise over various periods of time when YDSU and YDC were managed and staffed by different persons, under different policies, and where events were allegedly witnessed or known to different people.
4. State agency budgets are already stretched thin. All State agencies perform critical work every day for the public and are entering a time where they will have to do more with less. The judiciary is in a similar position. Doubling and tripling the workload on these cases will not only place difficult, complex, unmanageable, and prejudicial burdens on the parties, it will place similar strains on the court.
5. Even were that work-load manageable, the chance that plaintiffs' counsel will provide timely documents and information so as to permit DHHS to properly prepare for trial is slim. Indeed, since the Court issued its Order requiring service of approximately 85 Enhanced Automatic Disclosures within five months of the clerk's notice of its order

(January 16, 2025), Plaintiffs have made enhanced auto disclosures on behalf of only 12 plaintiffs.<sup>2</sup>

6. Plaintiffs' counsel have only sought extensions from the defendants for eight plaintiffs – four due to their inability to locate those clients<sup>3</sup>, and four as a result of those clients passing away.<sup>4</sup>
7. It is also important to note that 35 plaintiffs elected to pursue the Claims Fund by filing their Notice of Filing of Claim and Partial Stay *after* their Enhanced Automatic Disclosure deadline had passed (and in some instance after their deadline had *long* passed), without ever providing their Enhanced Automatic Disclosures to DHHS.<sup>5</sup>
8. To put it more simply, and as of this writing, at least 9 plaintiffs that are currently represented by Nixon Peabody remain in active litigation and are deficient in producing

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<sup>2</sup> Michael Gilpatrick; Natasha Maunsell; John Does No. 1, No. 2, No. 3, No. 4, No. 6, No. 8, No. 9, No. 58, and No. 92; and Jane Doe No. 3. Since making their disclosures, John Does Nos. 3, 58, and 92 have elected to pursue the Claims Fund.

<sup>3</sup> John Does No. 30, No. 38, No. 57, and No. 68 each had Enhanced Automatic Disclosures due on or about January 24, 2025. Plaintiffs were unable to locate two of the four, and the other two are “incarcerated in federal or out of state facilities and [Nixon Peabody’s] ability to communicate with them has been hampered.” In light of this, Plaintiffs’ counsel requested a thirty-day extension to February 17, 2025, “to either submit their settlement fund claim and/or notice of intent to file or provide an initial disclosure.” To date, no such disclosures have been made. On March 3, 2025, Plaintiffs’ counsel has since withdrawn their representation from John Doe No. 68.

<sup>4</sup> John Does No. 20, No. 45, and No. 56, and Jane Doe No. 34 all had Enhanced Automatic Disclosures due on or about January 24, 2025. Unfortunately, these Plaintiffs have apparently passed away. Plaintiffs’ counsel requested a six-month extension of their “obligations to allow time to file a suggestion of death and/or to make a determination as to how the case will move forward.” To date, no such pleading has been filed with the Court seeking an extension of this deadline.

<sup>5</sup> Corrine Murphy; John Does No. 5, No. 12, No. 15, No. 16, No. 23, No. 25, No. 31, No. 32, No. 35, No. 36, No. 37, No. 39, No. 42, No. 44, No. 48, No. 51, No. 55, No. 57, No. 59, No. 61, No. 62, No. 63, No. 69, No. 75, No. 77, No. 78, No. 82, No. 85, No. 89, No. 90 and No. 94; and Jane Does No. 5, No. 6, and No. 7.

their Enhanced Automatic Disclosures.<sup>6</sup> And this is to say nothing of the deficiencies related to Requests for Documents that DHHS propounded against these Plaintiffs two years ago.

9. This is all to say that Plaintiffs' Counsel are in control of these cases. At a whim they can shift cases set for a certain trial slot into the Claims Fund and move others up. *See* Pl.'s Ex. A – [Proposed] Second Amendment to Case Structuring Order of August 15, 2024 at ¶15 (“it may be necessary to add plaintiffs to the roster of plaintiffs scheduled for trial in 2025 and 2026. Plaintiffs’ counsel have informed this Court that further plaintiffs are available to substitute into the 2025-2026 trial schedule, if necessary. On the other hand . . . the parties may wish to reshuffle the order of trials.”). Such a loose arrangement is inappropriate and will result in a waste of significant time and resources for the parties and the court system.
10. Moreover, it is likely that much of the work required to prepare multiple cases for trial simultaneously will be for naught or will need to be repeated. For example, assume for the sake of argument that the September 2025 alternate trials are Gilpatrick, John Does No. 3 and No. 4, the January 2026 alternate trials are John Does No. 5 and No. 6 and the February 2026 alternate trials are John Does No. 7 and No. 8. If neither John Doe 3 or 4 settles<sup>7</sup>, the Court will either need to push the trials of John Does 5, 6, 7 and 8 back by months to accommodate the trial of John Doe 4, or John Doe 4 will have to be tried almost a year after originally anticipated. That delay in the trial of John Doe 4 may

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<sup>6</sup> Jane Doe No. 4; and John Does No. 20, No. 27, No. 30, No. 34, No. 38, No. 45, No. 56, and No. 59. John Doe No. 27 has, apparently, opted into the settlement fund, but Plaintiff’s counsel has not yet received the signed paperwork from the administrator to file the Notice of Stay.

<sup>7</sup> Having to prepare multiple cases for trial simultaneously will likely result in none of these cases settling because resources will be diverted to preparing for trial.

require the parties to exchange additional discovery (circumstances of the parties or witnesses may have changed in the intervening months) and will certainly require additional preparation as initial preparation goes stale.

11. On the other hand, if John Does 3 and 4 *both* enter the settlement fund, the Court will likely attempt to push the trial of John Doe 5 (or some other plaintiff) into the now vacant trial spot despite the discovery and motion practice that will not have been completed. Such a scenario already occurred with respect to Corrine Murphy, who was scheduled for trial in May. When Ms. Murphy entered the settlement fund *a mere six months before her trial* (without providing the defense any Court ordered discovery to date), the Court scheduled Natasha Maunsell for trial despite the fact that there had been virtually no substantive discovery in Ms. Maunsell's case completed at that point.
12. DHHS understands the issue – 800 cases filed by 800 plaintiffs, each seeking a jury trial. But the resolution to that predicament cannot be to abandon the normal rules of procedure that exist to safeguard the right to a fair trial and impose an untenable workload and burden on DHHS and the NHDOJ, especially where it is Plaintiffs, and not DHHS, that has control over which cases proceed to trial, and which are resolved through the settlement fund or otherwise.
13. The Superior Court Civil Rules have been adopted through the State Constitution's grant of power to the New Hampshire Supreme Court to "make rules governing the administration of all courts in the state and the practice and procedure to be followed in all such courts." N.H. Const. Pt. II, Art. 73-a. As such, they have the force and effect of law. *Id.*

14. The application of a rule may be waived only “as good cause appears and as justice requires.” N.H. Super. Ct. Civ. R. 1(d).
15. This court put many procedures and deadlines in the place for the management of these cases, which are implicated above. The summary judgment statute and the superior court civil rules permit the others. The parties have not waived the protection of these procedures or rules.
16. The court’s new proposal would have the effect of eviscerating most of the existing procedures and applicable superior court rules to the detriment of DHHS.
17. Such a procedure violates basic notions of a fair and just trial process, where the same rules that apply to all litigants apply to the parties in these cases. The court does not treat all criminal cases in the same way, nor does it treat all other civil cases in the same way.
18. As noted above, the court’s newly proposed procedure will also require the parties to at least double the amount of substantial resources already being dedicated to these cases to their significant financial detriment. The Plaintiffs’ newly proposed procedure will require potentially quadrupling those resources. Preparing two (or more) cases for trial simultaneously will require two (or more) trial teams managing discovery and trial preparation at the same time. These cases have not been structured to proceed in this way, the Plaintiffs have not kept current on their discovery obligations to allow this to happen, and this court for years has not managed these cases with that expectation that they would proceed in this fashion.
19. This sudden increase in additional work will not only cost the state and the plaintiffs more time, money, and resources, it will at least double the pre-trial workload of this

court and double the burden on the clerk's office during this time as twice the number of filings flow in requiring rulings under identical timelines.

20. Moreover, as a practical matter, the court's newly proposed plan diverges sharply from how these cases have been developing pretrial. It is highly likely that cases will come up for trial for which very little discovery has been completed or undertaken. DHHS is not waiving its discovery or dispositive motion rights in these cases.
21. Consequently, good cause and justice do not require such a radical departure from the court's civil rules and the existing procedures that the parties have already developed for the trial of these proceedings.
22. The defendant therefore objects to proceeding in a manner where multiple cases are expected to be prepared for trial simultaneously. The defendant is prepared to try Mr. Gilpatrick's case if it does not resolve. The defendant will also be prepared to try John Doe No. 1's case in August (or September) if need be. The defendant objects to any other procedure and reserves the right to pursue an interlocutory appeal or Rule 11 petition for original jurisdiction concerning any new structure or mode of proceeding that prejudices the defendant's ability to litigate these cases.
23. Finally, Plaintiffs re-request that certain cases be consolidated for trial. For brevity's sake, defendant incorporates in full herein its briefing on this issue as set forth in its DHHS's Partial Objection to the Plaintiffs' Motion to Set Initial Trial Dates; DHHS's Partial Objection to the Plaintiffs' Motion to Schedule Identified Plaintiffs for Trial #2; and on the record during the April 18, July 11, September 7, and November 9, 2023 case management conferences, as well as DHHS's January 10, 2024 request for leave to file an interlocutory appeal. *See also* Petition for Original Jurisdiction Pursuant to Supreme

Court Rule 11 (No. 2024-0260). Succinctly, this Court should not order consolidated trials. If it does, the defendant will likely pursue an immediate appeal to protect its rights.

**JOHN DOE #2**

24. Plaintiffs' Counsel additionally request that John Doe #2 be set for trial as early as September 29, 2025. DHHS objects to John Doe #2's case having trial priority.
25. John Doe #2 filed a notice of claim with the Settlement Fund Administrator on or about October 31, 2024 pursuant to 21-M:11-a, VIII (a) ("A claim is filed when a claimant submits a notice of claim form that provides the claimant's identifying and biographical information, identification of the claimant's attorney, if applicable, and a summary of the abuse alleged by the claimant.").
26. The Administrator issued a Notice of Claim and Stay for filing with the court on or about November 6, 2024. That Notice was never filed with this Court.
27. On December 10, 2024, a month after the Notice of Claim and Stay was issued by the Administrator, John Doe #2 apparently changed his mind and instructed his counsel to withdraw him from the settlement fund.
28. On December 31, 2024, the Administrator confirmed the withdrawal of the claim.
29. On January 6, 2025, Plaintiffs' counsel filed a "Notice of Conclusion of Claim and Lifting of Partial Stay".
30. It is true that this Court's December 9, 2024, Amendment to the Case Structuring Order states that a Plaintiff loses his place in line when (a) a plaintiff submits a claim to the settlement fund and (b) the parties file a notice indicating they agree to a stay. But for the delay (or lack of) filing the notice with the Court between October 31 and January 6, John Doe #2's case would otherwise be "de-prioritized" pursuant to this Court's order.

31. It is not clear that simply delaying filing of a Notice with the Superior Court is in keeping in the spirit of RSA 21-M:11-a or this Court's December 2024 Order.
32. As such, it is DHHS's position that John Doe #2 be "de-prioritized" pursuant to this Court's December order. Such is necessary to prevent the appearance of gamesmanship as these cases continue.

### **CONCLUSION**

WHEREFORE, DHHS respectfully requests that this Honorable Court:

- A. Proceed with these cases on an individual basis, as the rules of court provide for; and
- B. De-Prioritize John Doe #2's case pursuant to this Court's December 2024 Order; and
- C. GRANT such further relief as the Court deems just and equitable.

Respectfully Submitted,

State of New Hampshire Department of Health and  
Human Services; Division of Children, Youth and  
Families; and Division of Juvenile Justice Services

By their attorneys,  
JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: March 13, 2025

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## **CERTIFICATE OF SERVICE**

I certify that this same date I am electronically sending this document through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts in this case.

/s/ Brandon F. Chase  
Brandon F. Chase