

Clerk's Notice of Decision
Document Sent to Parties

on 06/07/2023

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

6-7-2023 GRANTED AS FOLLOWS:
The court will soon appoint a discovery master, who will likely be a judicial referee (see RSA 493-A:1-a), funded by the Judicial Branch.


CASE NO. 217-2020-CV-00026

DAVID MEEHAN

v.

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

(IN RE YDC and YDSU CONSOLIDATED LITIGATION)


Honorable Andrew R. Schulman
June 7, 2023
PLAINTIFFS' MOTION TO APPOINT REFEREE AS DISCOVERY MASTER**(For all Plaintiffs represented by Rilee & Associates, P.L.L.C. and Nixon Peabody LLP)**

Plaintiffs,¹ by and through counsel, submit this Motion to Appoint a Referee as Discovery Master. In support thereof, Plaintiffs state as follows:

1. This consolidated proceeding encompasses claims by hundreds of Plaintiffs who, as children, suffered severe and horrific child abuse when placed at the Sununu Youth Services Center ("Sununu Center") and at related facilities by Defendant State of New Hampshire Department of Health and Human Services ("DHHS"), and the other State Defendants. Cases against the State Defendants have been consolidated for pretrial purposes.

2. Hundreds of these Plaintiffs also have brought claims against non-State defendants – the "Contractor Defendants" – arising out of such Plaintiffs' placement in the Contractor Defendants' facilities or programs while the Plaintiffs were in the legal custody of the State.

¹ For purposes of this motion, "Plaintiffs" means all Plaintiffs in this consolidated litigation represented by Rilee & Associates, P.L.L.C. and Nixon Peabody LLP.

3. In all cases, Plaintiffs assert their right under the state Constitution to obtain justice promptly and without delay. *See* Part N.H. Const., Part I, Art. 14 (“Every subject of this State is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.”). As the New Hampshire Supreme Court has recognized, “the lapse of time inherent in extended litigation could rise to a constitutional violation [of part 1, article 14] in a given case.” *Opinion of the Justices*, 137 N.H. 260, 268 (1993). *See also Commonwealth v. Beckett*, 366 N.E.2d 1252, 1256 (Mass. 1977) (construing the analogous “prompt justice” provision of the Massachusetts Constitution: “we will not tolerate court congestion as an adequate ground for denying a reasonably prompt trial to a defendant who actively pursues his constitutional right to such a trial”).

4. The Court made clear at the January 27, 2023, status conference that it shares the Plaintiffs’ goal of bringing the first of these cases to trial in early 2024. Plaintiffs are concerned, however, that a trial schedule beginning in early 2024 for any of these cases may quickly become unrealistic given the sheer number of cases, related motion practice, and current and anticipated discovery disputes. Indeed, the Court recognized at the January 2023 status conference that trying each of these cases individually before juries would take decades.

5. Motions to dismiss by the State and Contractor Defendants will take a considerable amount of the Court’s time and resources. The parties are awaiting the Court’s decision on the State Defendants’ motions to dismiss the Master Complaint. Also, pursuant to the Court’s Procedural Order Relating to Claims Against Non-State Defendants, entered February 10, 2023, the Contractor Defendants are entitled to move to dismiss the 208 individual cases in

which they have been named as defendants. As the Court noted in that Order, these individual motions will be fact-bound.

6. Simultaneously, Plaintiffs are actively pursuing document discovery from the State Defendants, and plan to do the same with respect to the Contractor Defendants. As the Court is aware from the Plaintiffs' Motion to Compel, the Plaintiffs have filed three sets of Requests for Production in this case on DHHS. Plaintiffs believe DHHS's response to these requests do not comply with their obligations under the Superior Court Rules. Given the sensitive nature of the claims and volume of cases, it seems likely that disagreements about the scope and nature of discovery will continue to arise through this litigation.

7. Accordingly, Plaintiffs request that the Court appoint a referee as Discovery Master for this matter, so that the referee can focus on the progression of discovery while the Court addresses the pending and forthcoming motions to dismiss, in addition to other legal and case management issues.

8. Pursuant to RSA 519:9, the Court, "with the consent of the parties shall, and without the consent of the parties may, commit to one or more referees any cause at law or in equity, . . .; and with the consent of the parties shall so commit any other cause or the determination of any other question of fact." *See also* RSA 498:1 ("The superior court shall have the powers of a court of equity in the following cases: . . . discovery . . ."). Appointing a referee as a discovery master is appropriate here given the volume of discovery thus far, the parties' disagreements on the parameters of discovery, and the resulting impasses, as outlined in Plaintiffs' Motion to Compel.

9. For these reasons, Plaintiffs respectfully request that discovery issues be referred to a referee or retired justice of the Superior Court pursuant to RSA 519:1, *et seq.*, with the Court maintaining general oversight of the referee's work. If the Court grants Plaintiffs' request for relief,

Plaintiffs will work with the State Defendants to draft and submit a proposed order for the Court's consideration within one week.

10. Plaintiffs' counsel has conferred with counsel for the State regarding the relief requested by this Motion. As of the time of this filing, the State was still considering its position, but intends to apprise the Court on or before the date a response to this Motion is due.

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Grant this Motion to Appoint Referee;
- B. Order Plaintiffs and State Defendants to confer and submit a joint proposed order appointing a referee within seven days; and
- C. Grant any other relief as is just and fair.

Respectfully submitted,

PLAINTIFFS

Dated: April 7, 2023

By and through counsel,

RILEE & ASSOCIATES, P.L.L.C.

NIXON PEABODY LLP

/s/ Cyrus F. Rilee

Cyrus F. Rilee, III, Esq. (Bar No. 15881)

Laurie B. Rilee, Esq. (Bar No. 15373)

264 South River Road

Bedford, NH 03110

T: 603.232.8234

crilee@rileelaw.com

lrilee@rileelaw.com

/s/ W. Daniel Deane

David A. Vicinanza, Esq. (Bar No. 9403)

W. Daniel Deane, Esq. (Bar No. 18700)

Mark Tyler Knights, Esq. (Bar No. 264904)

Kierstan Schultz, Esq. (Bar No. 20682)

Nathan Warecki, Esq. (Bar No. 20503)

Erin S. Bucksbaum, Esq. (Bar No. 270151)

Allison Regan, Esq. (Bar No. 272296)

900 Elm Street, 14th Floor

Manchester, NH 03101

T: 603-628-4000

dvicinanzo@nixonpeabody.com

ddeane@nixonpeabody.com

mknights@nixonpeabody.com

kschultz@nixonpeabody.com

nwarecki@nixonpeabody.com

ebucksbaum@nixonpeabody.com

aregan@nixonpeabody.com

CERTIFICATE OF SERVICE

I certify that on April 7, 2023, I am sending a copy of this document as required by the rules of the court. 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 (e-mail addresses) in this case.

/s/ W. Daniel Deane _____