

Clerk's Notice of Decision
Document Sent to Parties

on 04/19/2023

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

4-18-2022: GRANTED IN PART. The Meehan case has been scheduled for a jury trial in April 2024. The court set aside two additional jury trial slots in June and September 2024 for such other of these consolidated cases as may be agreed upon by the parties.


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
April 18, 2023

PLAINTIFFS' MOTION TO SET INITIAL TRIAL DATES

Plaintiffs¹ submit this Motion to Set Initial Trial Dates for cases selected to be tried together in initial consolidated trials. The purpose of this motion is to begin moving this consolidated litigation forward by setting an initial round of trial dates for a representative subgroup of Plaintiffs. By focusing on the claims of a subgroup of Plaintiffs and setting dates for an initial round of trials, the Court will assist the parties in focusing their discovery and other pretrial efforts. It is important to do so now as Plaintiffs have a constitutional right to prompt justice. As a practical matter, Plaintiffs are aging, and some of them even dying, while they wait for justice.

The Constitutional Imperative of "Prompt" Justice "Without Delay"

1. Plaintiffs, who are now adults, were abused by State actors when they were still young children and unable to defend themselves or to advocate for themselves. They have been denied a voice for their entire lives and are still battling to be heard. Almost five years have passed since David Meehan first informed State authorities of the horrific abuse he suffered while in 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.

custody. While Plaintiffs have been patient and were encouraged by the Attorney General's initial response, with the passage of time it has become increasingly clear that the State is only interested in delay, denial, and attempting to avoid accountability through all manner of technical defenses.

2. Three years have passed since David Meehan filed his Class Action Complaint seeking to represent a class of victims of State-sponsored child abuse. While the Court denied class action treatment, hundreds of individual Plaintiffs have followed Mr. Meehan in coming forward with their stories and filing individual lawsuits against State Defendants. Those cases have been consolidated for purposes of motion practice and discovery. To date, Plaintiffs have filed over 700 Short Form Complaints alleging causes of action against State Defendants and, in some cases, certain third-party contractors. All of the Short Form Complaints incorporate by reference the common allegations and causes of action set forth in Plaintiffs' Master Complaint, which was modeled after Mr. Meehan's initial Class Action Complaint.

3. Each of the individual civil actions filed in these consolidated proceedings demonstrate that the actions and inaction of State Defendants left Plaintiffs, who were children completely dependent upon the State, vulnerable to horrific (and yet routine) acts of child abuse from which they incurred lifelong physical and emotional scars. The Short Form Complaints detail unimaginable wrongs, including brutal rapes, forced abortions, broken bones, and days, weeks, and sometimes even months of cruel isolation where children were at times shackled and forced to urinate and defecate, without a toilet, in the same room in which they slept. Plaintiffs were also deprived of their right to an education and thus the ability to improve their lives. The deplorable

treatment of children in the State's custody has been known to public officials in New Hampshire for decades² and continues today.

4. Plaintiffs are confident that this Court will soon deny, in part if not in whole, both of State Defendants' first two motions to dismiss the Master Complaint. Accordingly, State Defendants should not be permitted to continue to put off Plaintiffs' pursuit of justice. While the task of timely and efficiently processing the hundreds of individual cases in these consolidated proceedings may be daunting, the scope and enormity of these cases should not prevent progress toward trial. "A journey of a thousand miles begins with a single step," so the Chinese proverb goes. Plaintiffs submit that choosing a subgroup of Plaintiffs for an initial round of trials, and setting dates for that first wave of trials, will be a huge step forward that will greatly assist in moving the rest of the consolidated litigation toward a timely resolution. It is likely that these initial trials will be highly instructive to the parties, their counsel, and the Court, and will lead to greater efficiencies in the future.

5. The setting of trial dates is not just prudent for practical and logistical reasons; it is also constitutionally required. Each Plaintiff individually asserts their constitutional right, under Part 1, Article 14 of the New Hampshire Constitution, "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." N.H. CONST. pt. 1, art. 14 (emphasis added). 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*

² A comprehensive timeline of the State's knowledge of the horrendous conditions of juvenile care in New Hampshire can be found in Plaintiff's Objection to the State's Second Motion to Dismiss, pages 25-32.

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”).

6. The Court should begin scheduling trial dates now, starting with a date for the first consolidated trial. The failure to do so at this stage would unnecessarily and unfairly delay justice to hundreds of victims of State-sponsored child abuse and would threaten to prejudice Plaintiffs and violate their constitutional rights. The harm suffered by many Plaintiffs is ongoing and continues to accumulate with each passing day. Indeed, many victims have lost their opportunity for justice altogether—six clients of undersigned counsel have died within the past year alone, including from causes likely connected to the trauma caused by State Defendants.³

7. Moreover, as has been demonstrated by their course of conduct over the last year, it seems very unlikely that State Defendants will be willing to meaningfully participate in this litigation absent court-enforced discovery deadlines. Respectfully, this Court should not countenance excuses from State Defendants premised on a lack of resources or staffing to handle this litigation. The State has been on notice of the size, scale, and severity of these cases for years and has had ample time to prepare for the litigation of these cases, including by hiring necessary staff. It would be manifestly unjust to further delay, and in some cases effectively deny, Plaintiffs’ day in court based on the State’s failure to sufficiently prepare and staff itself accordingly.

³ John Doe #20, Jane Doe #13, John Doe #162, John Doe #481, and two clients who had not yet filed complaints.

Plaintiffs' First Proposed Subgroup for Trials

8. David Meehan was the first victim of abuse at YDC to bravely report to authorities and actually succeed in getting the State's attention. For the five years since then, he has been advocating both for himself and on behalf of the other victims. Mr. Meehan was also the first to file a lawsuit against the State of New Hampshire. Further, State Defendants' motion to dismiss Mr. Meehan's individual claims has already been denied, and it is clear that his claims will proceed beyond the pleadings stage.

9. Undersigned counsel believe that Mr. Meehan's experience at YDC is illustrative of the experience of many of his peers. Additionally, Mr. Meehan was at YDC during a particularly violent and abusive period in the history of that facility – the middle and late 1990s. Not surprisingly, many other Plaintiffs in the consolidated litigation were also detained or committed to YDC during that period, and many of those Plaintiffs were abused by the very same perpetrators who tormented Mr. Meehan. In particular, Jeffrey Buskey, Stephen Murphy, James Woodlock, Frank Davis, Richard Brown, and Gordon Thomas Searles have been identified as abusers of many of the Plaintiffs in the consolidated litigation and each of those men were named defendants in Mr. Meehan's original Class Action Complaint.

10. Accordingly, Plaintiffs propose that the initial trials focus on the claims of other Plaintiffs who were abused at the YDC during the same time period, and by many of the same individuals, as Mr. Meehan, as well as other commonly known abusers in that time period. In addition to the abusers identified by Mr. Meehan, multiple Plaintiffs in this proposed first wave have alleged abuse by other perpetrators who appear repeatedly in allegations across these consolidated cases—i.e., Bradley Asbury, Lamont Hicks, Lucien Poulette, Wesley Oates, Dick

Croteau, and Tony LaForge. Plaintiffs accordingly propose the following 25 Plaintiffs for the first subgroup:

<u>Plaintiff Name</u>	<u>Time Period</u>	<u>Known Overlapping Abusers</u>
David Meehan	1995 – 1999	Buskey, Murphy, Woodlock, Davis, Brown, Searles
Michael Gilpatrick	1997 – 2000	Buskey, Murphy, Davis, Asbury, Brown, Searles
Corrine Murphy	1996 – 1999	Buskey, Hicks
Jane Doe #10	1996 – 1999	Murphy, Woodlock, Hicks, Oates
John Doe #1	1994 – 1997	Murphy, Woodlock, Davis
John Doe #3	1991 – 1998	Buskey, Murphy, Searles
John Doe #4	1996 – 1999	Buskey, Poulette, Murphy
John Doe #47	1996 – 1999	Murphy, Woodlock, Searles, Poulette
John Doe #52	1993 – 1997	Buskey, Murphy, Davis
John Doe #58	1993 – 1997	Murphy, Woodlock, Davis, Asbury, Searles
John Doe #59	1994 – 1998	Buskey, Murphy, Davis, Brown, Searles, LaForge
John Doe #84	1996 – 1998	Buskey, Woodlock, Asbury, Poulette, LaForge
John Doe #123	1996 – 1999	Buskey, Murphy, Oates
John Doe #168	1996 – 1997	Murphy, Woodlock
John Doe #274	1995 – 1997	Buskey, Murphy, Woodlock, Davis, Asbury, Searles, Dick Croteau
John Doe #285	1994 – 1996	Murphy, Davis, Searles
John Doe #300	1995 – 1998	Murphy, Davis, Asbury, Brown, Searles
John Doe #309	1997	Murphy, Woodlock, Asbury, Brown
John Doe #326	1996 – 1998	Murphy, Woodlock
John Doe #337	1994 – 1997	Murphy, Woodlock, Asbury
John Doe #346	1993 – 1997	Murphy, Woodlock, Searles, Croteau
John Doe #350	1994 – 1997	Buskey, Murphy, Woodlock
John Doe #407	1994 – 1998	Murphy, Woodlock, Davis, Asbury, Searles, Hicks, Oates
John Doe #490	1996 and 1997 – 1999	Buskey, Murphy, Woodlock
John Doe #497	1993 – 1995	Woodlock, Davis, Brown, Croteau

11. Consolidating the cases of these Plaintiffs in two to five trials would significantly increase efficiency as the perpetrators and witnesses overlap across this group of Plaintiffs. Additionally, many of these Plaintiffs were early filers in these proceedings—they include Michael Gilpatrick, Corinne Murphy, and John Does #1, #3, and #4, all of whom were among the first Plaintiffs to file individual suits after Mr. Meehan’s class action claims were dismissed. Thus, this subgroup of Plaintiffs have been waiting for a trial date longer than most of the other Plaintiffs in

these consolidated proceedings. This subgroup of Plaintiffs includes individuals who have suffered a wide array of abuse that is representative of the abuse suffered by the Plaintiffs as a whole, including those who suffered only physical abuse, those who suffered only sexual abuse, and those who suffered both forms of abuse. In addition, none of these individuals asserts a claim against a Contractor Defendant, which will contribute to the efficiency in preparing and trying their cases.

12. To clarify, Plaintiffs do not intend a single consolidated trial of the cases of all of the above-listed Plaintiffs. Undersigned counsel propose that the Plaintiffs identified above be selected for the first wave of trials with the understanding that some Plaintiffs may drop out over the course of time, either by entering the settlement claims fund, by settling with State Defendants outside of that process, because their claims are dismissed, or for other reasons. Undersigned counsel submit that trying the cases of five to six Plaintiffs in a single trial would be preferable. More than that would likely prove unwieldy.

13. As the first trial date draws closer, the parties and the Court can discuss which Plaintiffs in this first wave will proceed to trial on the first trial date, and defer any remaining Plaintiffs to the later scheduled trial dates.

14. Plaintiffs propose that the Court set the first trial date in early March 2024, with successive trial dates scheduled every three months thereafter. A trial date in March 2024 gives the parties more than a year to complete discovery and prepare for trial. Inasmuch as the parties have begun document discovery and Plaintiffs have already begun work with a dozen expert witnesses, a one-year runway should be sufficient. Plaintiffs believe each consolidated trial of five to six Plaintiffs should take no longer than two to three weeks to complete.

15. By settling on this first subgroup of Plaintiffs for the first wave of trials, the parties can focus their discovery efforts. In discovery meetings, counsel for State Defendants have asked

undersigned counsel for a list of Plaintiffs, State custodians, and time-frames so that they can prioritize as they search for documents responsive to Plaintiffs' discovery requests. Once a subgroup is defined for the initial round of trials, the parties will be able to agree on such priority setting, which will greatly assist in efforts to discover relevant information.

16. Of course, this proposed subgroup of Plaintiffs is only the first. Undersigned counsel is presently working on a proposal for a second subgroup, which they can present to the Court at the next status conference.

Conclusion

17. For the foregoing reasons, Plaintiffs request that the Court approve Plaintiffs' proposed subgroup of Plaintiffs for the first round of trials and set a trial date in early March 2024 for the first consolidated trial.

18. Plaintiffs further request that the Court set additional trial dates for this first wave of Plaintiffs in early June, early September, and early December 2024.

19. No memorandum of law accompanies this Motion as the relief sought is within this Court's sound discretion and all relevant authority is cited herein.

20. Undersigned counsel did not consult with counsel for State Defendants before filing this motion as undersigned counsel reasonably believed they would not obtain concurrence from State Defendants before the January 27, 2023, status conference and counsel wished to present this proposal to the Court for discussion at that conference.

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Approve Plaintiffs' proposed subgroup of Plaintiffs for the initial round of trials in these consolidated cases;
- B. Set the first trial for this first wave of cases for early March 2024;

C. Schedule subsequent trial dates for this first wave of cases for early June, September, and December 2024; and

D. Grant such other relief as is just and fair.

Respectfully submitted,

PLAINTIFFS

Dated: January 25, 2023

By and through counsel,

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

NIXON PEABODY LLP

/s/ Cyrus F. Rilee, III

/s/ Daniel Deane

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

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

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

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

264 South River Road

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

Bedford, NH 03110

Kierstan Schultz, Esq. (Bar No. 20682)

T: 603.232.8234

Nathan Warecki, Esq. (Bar No. 20503)

crilee@rileelaw.com

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

lrilee@rileelaw.com

Allison K. 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 January 25, 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/ Daniel Deane

Daniel Deane, Esq.