

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

**STATE DEFENDANTS' PARTIAL OBJECTION TO PLAINTIFFS' MOTION TO SET
INITIAL TRIAL DATES**

The State Defendants¹ hereby respond to *Plaintiffs' Motion to Set Initial Trial Dates*, dated January 25, 2023 (the "*Motion*"). Plaintiffs' counsel filed the *Motion* during the evening of January 25, 2023, for discussion at the January 27, 2023, status conference held by this court without consulting the State Defendants. *Motion*, ¶ 20. At the Court's request, the State Defendants now submit this response. This response is in part the product of several meet-and-confers held with Plaintiffs' counsel.

In brief, the State Defendants concur with the Plaintiffs' suggestion that Mr. Meehan's case should be the first to proceed to trial, and also concur with the Court's statements at the status conference that (1) any trial date of March 2024 is aspirational at best; (2) the idea of trying the cases of five plaintiffs together could raise concerns; (3) each side should have input in the selection of cases for initial trials; and (4) a rational number of cases – perhaps five – should be selected for trials. The State Defendants further state as follows:

¹ In legal reality there is only one proper State Defendant: DHHS.

1. In the *Motion*, Plaintiffs suggest a “subgroup” of 25 cases for trial in the first tranche. *Motion*, ¶ 10. Plaintiffs’ Counsel suggest that these 25 cases be tried in “two to five trials,” of groups of “five to six Plaintiffs” at three-month intervals, starting March 2024. *Motion*, ¶¶ 11, 12 & 14. Plaintiffs’ Counsel estimate that these joint trials of multiple plaintiffs’ cases would take only “two to three weeks.” *Motion*, ¶ 14. David Meehan’s case is listed in the first subgroup of 25 cases. *Motion*, ¶ 10, 11. All 25 suggested cases arise from abuse alleged to have taken place during the decade of the 1990s. *Motion*, ¶ 10.

2. During the status conference on January 27, 2023, the Court briefly discussed the *Motion*. The Court stated that (1) any trial date of March 2024 is aspirational at best; (2) the idea of trying the cases of five plaintiffs together could raise concerns; (3) each side should have input in the selection of cases for initial trials; and (4) a rational number of cases should be selected for trials – the Court suggested the number five. The State Defendants agree with the Court’s views.

3. Plaintiffs’ Counsel’s proposed group of 25 cases is not an appropriate group to be tried first. These cases are all from the 1990s, and all allege abuse by at least one, and in many of the cases more than one, individual who has been indicted for criminal sexual assaults. Yet by State Defendants’ count (based on the complaints which they have had time to initially inventory), approximately two-thirds of the YDC Consolidated Cases currently pending are from decades *other than* the 1990s.² And it appears that over two thirds of the cases do *not* involve allegations that the plaintiff was abused by any of the indicted staff members. In short, the plaintiffs’ proposed group is not a representative sample, and the results of the trials in this group alone would not be informative as to the larger universe of cases.

² Based on State Defendants’ initial analysis of 649 of the consolidated YDC cases by date out of state custody taken from the short form complaints, almost exactly one third are from the 1990s, over one third are from the 2000s, over one fifth are from the 1960s, 70s & 80s, and a little over one tenth are from the 2010s.

4. State Defendants do not object to Mr. Meehan’s case being the first to be tried and agree that an aspirational trial date could be set now.

5. State Defendants suggest, however, that an aspirational trial date should be set no earlier than June 2024, as there remains a significant amount of discovery and other preparation work ahead, this Court has not yet ruled on the Master Motions to Dismiss, and motion practice on the Short Form Complaints has not yet even begun.

6. State Defendants concur with Plaintiffs’ suggestion that subsequent trials be scheduled at approximately three-month intervals thereafter. *Motion* ¶ 14.³ However, it is premature to choose the particular cases to be tried following *Meehan* at this time.

7. Further, only one Plaintiff’s case should be tried at a time, that is, the cases of more than one Plaintiff should *not* be consolidated for trial. Each case should be tried singly. Consolidating cases for trial will risk confusing the jury both with overlapping and non-overlapping evidence and with difficult limiting instructions. There will be a risk of spill-over, which would prejudice the State Defendants and potentially prejudice the plaintiffs themselves. Additionally, the results of a multi-plaintiff trial will likely not be informative as to other cases in the same way a more traditional bellwether approach would. Further, Plaintiffs’ estimate that joint trials of 5 or 6 plaintiffs’ cases together would “likely” take only two to three weeks, *Motion*, ¶ 14, seems unrealistic. In short, joint trials risk becoming unmanageable and prejudicial to the parties.

8. Cases selected for trial should not include cases with so-called “supplemental claims” with third-party contractor defendants. *Accord Motion* ¶ 11. State Defendants

³ However, this Court should keep in mind that there may be up to several dozen non-consolidated “contractor-residence only” cases, such as those involving John Does ## 26 & 373 and Jane Doe # 73, as well as other *sui generis* cases such as John Doe #225, proceeding on their own tracks in Merrimack County at the same time.

understand that this would still leave somewhere between two-thirds and three-quarters of the consolidated YDC cases from among which to select cases for initial trials.

9. Both plaintiffs and defendants should propose cases to be tried initially, and trials should alternate back and forth between a plaintiff-proposed case and a defense-proposed case.

10. State Defendants submit that no more than eight cases be selected for trial (plus some back-ups), and the cases should be selected from various decades, not just from the 1990s. The parties should continue to meet and confer to develop appropriate criteria to be used to select representative cases. Such criteria might include the alleged abuser(s), time frames, facilities or locations, or types of injuries and harms. The parties would then take turns proposing an appropriate representative case (and potential back-ups) which the parties could discuss and ideally agree upon. The State Defendants would go first at this point, proposing the case to be slotted into the trial date following Mr. Meehan's trial date. This approach would result in a more reasonable distribution of representative cases, and a total of eight cases for this bellwether trial grouping. State Defendants believe the above proposal will provide more balanced and wide-ranging information as to the whole corpus of cases than would the Plaintiffs' proposal of trying up to 25 cases (or 50 if the State Defendants also propose 25 cases) solely from the 1990s in multiple multi-plaintiff, and therefore potentially unmanageable and prejudicial, trials.

11. While the State Defendants agree that the *Meehan* case should be tried first, that an aspirational trial date of June 2024 could be set for the *Meehan* case, and that placeholder trial dates could be set for three-month intervals thereafter, it is premature at this point to select subsequent cases or formalize anything beyond those three points and the generalized bellwether framework set forth above.

12. State Defendants attempted to obtain assent for the relief sought herein from plaintiffs' counsel; Plaintiffs' counsel do not concur to the State Defendants' counter-proposal.

WHEREFORE, the State Defendants respectfully request that this Honorable Court

- A. SET the David Meehan case (No. 217-2020-CV-00026) as the first case to be tried, with a provisional trial date on or after June 2024, with recognition that such a date is aspirational rather than firm;
- B. SET provisional placeholder trial dates at three-month intervals thereafter, while the parties further meet and confer regarding criteria and selection of representative cases to be the second and subsequent bellwether cases to proceed to trial;
- C. DISCUSS further the issues raised by the *Plaintiffs' Motion to Set Initial Trial Dates* and this response beginning at the status conference presently scheduled for April 18, 2023, and thereafter as developments warrant;
- D. Otherwise DENY without prejudice the *Plaintiffs' Motion to Set Initial Trial Dates* as premature; and
- E. GRANT such further relief as justice requires.

Respectfully Submitted,

State of New Hampshire; New Hampshire
Department of Health and Human Services;
Department of Youth Development Services;
Division of Children, Youth, and Families; Division
of Juvenile Justice Services; and Sununu Youth
Services Center, a/k/a Youth Development Center
and Youth Development Services Unit, f/k/a State
Industrial School and Adolescent Detention Center

By their attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: February 13, 2023

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the Court's electronic filing system to all parties of record on the date above.

/s/ Brandon F. Chase
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