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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

J.K., a minor by and through R.K., *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

WILL HUMBLE, in his official capacity as Interim Director of the Arizona Department of Health Services; DR. LAURA NELSON, in her official capacity as Director, Division of Behavioral Health Services, Arizona, Department of Health Services; THOMAS J. BETLACH, in his official capacity as Director, Arizona Health Care Cost Containment System,

Defendants.

No. CIV 91-261 TUC-AWT

[PROPOSED] ORDER APPOINTING SPECIAL MASTER PURSUANT TO RULE 53 OF FEDERAL RULES OF CIVIL PROCEDURE

(Honorable A. Wallace Tashima)

APPOINTMENT OF SPECIAL MASTER

1. The Court finds that it is necessary to appoint [NAME OF SPECIAL MASTER] as Special Master in this matter.
2. The Court finds that the appointment of a Special Master is required here to resolve the threshold dispute described in paragraph 8 below.
3. The Special Master's appointment will become effective upon her/his filing an affidavit disclosing that there is no ground for disqualification under 28 U.S.C. § 455. *See Fed. R. Civ. P. 53(a)(2) &(b)(3).*
4. The Special Master's term of service will end when her/his duties are completed or the Court terminates the appointment, whichever comes first.

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5. The Special Master shall proceed with all reasonable diligence to perform her/his duties. *See* Fed. R. Civ. P. 53(b)(2). As appropriate, the Special Master shall seek, and try to promote, the resolution of issues by agreement.

6. [NAME OF SPECIAL MASTER] is well-qualified to serve as the Special Master in this matter.

7. Plaintiffs and Defendants have consented to the Court’s appointing a Special Master in this case for the limited purpose of recommending a resolution of the dispute described in paragraph 8 below.

SPECIAL MASTER’S DUTIES

8. The parties differ in their interpretation of the Settlement Agreement. Plaintiffs assert that the Settlement Agreement requires development of a behavioral health system that delivers services according to the “*J.K. Principles*, including by expanding intensive-community-based services, creating an effective training program, and changing the quality management system. (Dkt. 473, Ex. 11). As more fully set forth in Defendants’ Cross-Motion to Dismiss (Dkt. 473), the Defendants assert that the Plaintiffs have not stated a claim for violation of the Settlement Agreement and the dispute resolution process required by the Agreement was aborted by the Plaintiffs.

9. By [DATE], the Special Master shall issue a written report recommending to the Court a resolution of the parties’ differences concerning the interpretation of the Settlement Agreement and whether and, if so, how to proceed in resolving any legitimate dispute under the Agreement. Before issuing her/his report, the Special Master Special may meet with the parties together to discuss and better understand the nature of their differences, and may require the parties to file briefs and present oral argument.

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10. The Special Master shall file with the Court a complete record of the information and documents considered in issuing his or her findings and recommendation. In her/his discretion, the Special Master may file parts of the record under seal.

SPECIAL MASTER’S AUTHORITY

11. The Special Master shall have the authority to take appropriate measures to perform her/his duties fairly and efficiently, and regulate all proceedings before her/him.. See Fed. R. Civ. P. 53(c).

12. The Special Master may communicate ex parte with the Court. When practicable, the Special Master will give the parties advance notice of such communications. If advance notice is not practicable, the parties will be informed that an ex parte communication has occurred.

OBJECTIONS TO ORDERS, FINDINGS, OR RECOMMENDATIONS

13. Any party may file objections to or a motion to adopt or modify an order, report, or recommendation of the Special Master. Objections shall be filed no later than 10 days after the order, report, or recommendation is filed, unless the Special Master or the Court enters an order allowing a greater period of time. Objections shall be specific and accompanied by a memorandum describing the legal and factual basis for the objection.

14. The Court will decide de novo objections to finding of facts or conclusions of law made or recommended by the Special Master. The Court will modify or set aside the Special Master’s decisions with respect to procedural matters only for abuse of discretion.

BUDGET AND COMPENSATION

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15. The Court will fix the Special Master's compensation and will establish a budget for the Special Master.

16. Within 14 days of this Order and after consultation with the parties, the Special Master will submit to the Court a proposed budget for six months of work, including a proposed hourly rate and an estimate of expenses. After consulting with the Special Master, the Court will approve the proposed budget, with any revisions the Court deems appropriate.

17. Every two months, the Special Master will provide the Court and the parties with a statement of time spent performing her/his duties, as well as any expenses incurred, including the cost of experts.

ALLOCATION OF COST

18. The Court will allocate the compensation for time and expenses reasonably incurred by the special master as it deems appropriate to be sure both parties have an incentive to make timely progress in the resolution of the dispute described in paragraph 8 above.

OTHER MATTERS

19. The Special Master shall enjoy the same protections from being compelled to give testimony and from liability for damages as those enjoyed by other federal judicial officers performing similar functions.

20. The Special Master will preserve records relating to her/his work as Special Master until relieved of this obligation by order of the Court.

Dated this __ of _____, 2012.
