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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 them selves and all othe rs)
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. CV 91-261 TUC-AWT

ORDER APPOINTING
SPECIAL MASTER

With the consent of the parties, the Court finds that the appointment of a Special Master will advance the resolution of this case and of the pending disputes between the parties. The Court, therefore, appoints Justice Ruth V. McGregor (Retired) as Special Master in this matter to carry out the duties, and subject to the conditions, set forth below.

1. The Special Master’s appointment will become effective upon the filing of this order and her filing an affidavit or declaration disclosing that there is no ground for disqualification under 28 U.S.C. § 455. *See* Fed. R. Civ. P. 53(a)(2) & (b)(3).

1 2. The Special Master's term of service shall end when her duties are
2 completed or the Court terminates the appointment, whichever comes first.

3 3. After canvassing the candidates submitted by the parties, the Court finds
4 that Ruth V. McGregor is well-qualified to serve as the Special Master in this matter.

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

8 ***Special Master's Duties***

9 5. The parties differ in their interpretation of the Settlement Agreement.
10 Plaintiffs contend that the Agreement requires development of a behavioral health system
11 that delivers services according to the *J.K.* principles, including by expanding intensive-
12 community-based services, creating an effective training program, and changing the
13 quality management system (Dkt. 473, Ex. 11). As set forth in their Cross-Motion to
14 Dismiss (Dkt. 473), Defendants contend that Plaintiffs have not stated a claim for
15 violation of the Settlement Agreement and that the dispute resolution process under the
16 Agreement was aborted by Plaintiffs.

17 6. Within six months of her appointment, or as extended, the Special Master
18 shall issue a report and recommendation to the Court of a resolution of the parties'
19 differences concerning the interpretation of the Settlement Agreement and whether and, if
20 so, how to proceed in resolving any disputes arising under the Agreement. The
21 procedures to be followed by the Special Master in reaching her report and
22 recommendation shall be as the Special Master deems necessary, and may include
23 meeting and discussing with the parties the nature of their differences and briefing and/or
24 oral argument by the parties.

25 7. Together with her report and recommendation, the Special Master shall
26 lodge with the Court a complete record of the evidence and documents considered by her
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1 in issuing her report and recommendation. In her discretion, the Special Master may file
2 such parts of the record as she deems necessary under seal.

3 ***Special Master's Authority***

4 8. The Special Master shall have the authority to take appropriate measures to
5 perform her duties fairly and efficiently, and regulate all proceedings before her. *See Fed.*
6 *R. Civ. P. 53(c).*

7 9. Defendants shall make the officials and records of the Arizona Health Care
8 Cost Containment System ("AHCCCS") and related state agencies available to the
9 Special Master and any experts retained by her for such interviews and review as the
10 Special Master deems necessary and appropriate.

11 10. The Special Master shall have the authority to retain experts to assist her in
12 carrying out her duties under this order, but before exercising that authority, shall either
13 (a) obtain the consent of the parties to the retention of any expert, or (b) absent such
14 consent, make application to the Court for leave to retain such expert.

15 ***Objections to Orders, Report and Recommendation***

16 11. Any party may file an objection to or a motion to adopt or modify an order,
17 report, or recommendation of the Special Master. Objections shall be filed no later than
18 10 days after the order, report, or recommendation is filed, unless the Special Master or
19 the Court orders a greater period of time. Objections shall be specific and accompanied
20 by a memorandum describing the legal and factual bases of the objection.

21 12. The Court shall decide *de novo* objections to findings of fact and/or
22 conclusions of law made or recommended by the Special Master. The Court will modify
23 or set aside the Special Master's orders with respect to procedural matters only for an
24 abuse of discretion.

25 ***Compensation***

26 13. The Special Master shall be compensated for all of her time reasonably
27 required in the performance of her duties at such rate as the Court approves, after
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1 application by the Special Master, but expects that such compensation shall be at a rate
2 not greater than the prevailing rate in the Phoenix and Tucson areas. The Special Master
3 shall file and serve upon the parties her application(s) for compensation, and reimbursable
4 expenses (including the cost of any experts), each calendar quarter. The Special Master's
5 initial application for compensation shall include her recommendation as to how the cost
6 of her services and costs should be allocated between the parties. The Court shall allocate
7 any compensation awarded to the Special Master between the parties in a manner
8 determined by the Court to be just, reasonable, and appropriate, after notice and hearing.
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10 Dated this 14th day of November, 2012.

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14 A. Wallace Tashima
15 United States Circuit Judge
16 Sitting by Designation
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