

1994 WL 185024

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United States District Court, E.D. Pennsylvania.

Terri Lee HALDERMAN, et al.

v.

PENNHURST STATE SCHOOL AND HOSPITAL,
et al.

No. CIV. A. 74-1345. | May 12, 1994.

Opinion

BRODERICK.

***1** Presently before the Court is the issue of appointment of a Special Master to oversee the implementation of this Court's Order of March 28, 1994 ("March Order"). On March 28, 1994, this Court issued a Memorandum and Order finding that two of the defendants in this case, the Commonwealth of Pennsylvania ("Commonwealth") and the County of Philadelphia ("County"), were in contempt of this Court's Order of April 5, 1985 ("Court Decree"). That Memorandum and Order detailed massive noncompliance on the part of both of the defendants in that they had failed to provide minimally adequate habilitation to Philadelphia *Pennhurst* class members as ordered in the Court Decree. The March Order requires the defendants to comply with the Court Decree and specifies various timelines for compliance. Among other things, the Order mandates that the defendants provide community living arrangements to all presently institutionalized Philadelphia class members within twelve (12) months of the date of the Order. The Order also mandates that all Philadelphia class members will receive current individualized habilitation plans, including all services and therapies prescribed therein and that the defendants will take steps necessary to ensure that all Philadelphia class members are protected from harm and have access to adequate medical and dental services. The Order also provides that each defendant is to report monthly to the Court's Special Master on its compliance with the Court Decree and the March Order.

On April 4, 1994, the Court held a hearing to give the parties an opportunity to present their views on appointment of a Special Master in this case. At that hearing, the Court asked the parties to submit names of possible candidates for Special Master. The plaintiffs asked the Court to retain Dr. Sue Gant as Special Master. The defendants, on the other hand, submitted to the Court the names of approximately eleven candidates. The Court commenced interviewing candidates, but shortly thereafter the parties suggested to the Court that they

believed that they could agree on a candidate to submit to the Court for its approval. The Court acceded to their request and granted the parties extra time to arrive at an agreement. Approximately one week later, the parties proposed to the Court that J.A. (Tony) Records of Takoma Park, Maryland, should be appointed Special Master for purposes of monitoring the March Order. Indeed, this Court was gratified that after twenty years of often contentious litigation involving numerous contempt hearings, the parties finally were able to reach agreement on something.

Shortly after the parties proposed Mr. Records, the Court interviewed him and found that he has the experience and knowledge of the background of this litigation to enable him to serve as Special Master. Accordingly, the Court announced to the parties in open court on May 6, 1994 that Mr. Records was appointed Special Master in this matter.

***2** To enable Mr. Records to carry out his duties, the Court deems it in the best interests of all parties that he have an office in Philadelphia and that his office space should be independently located from any of the parties in this case. Therefore, with the approval of the Court, Mr. Records has located and rented office space at 1420 Walnut St., Suite 1102, Philadelphia, PA.

Furthermore, the Court has requested that Mr. Records submit an estimated annual budget for his activities as Special Master during the next twelve months. Mr. Records total annual budget for the period commencing May 6, 1994 through and including May 5, 1995 is \$173,715.00, which includes the following items: fees to Mr. Records in the amount of \$700 per day (Mr. Records estimates that he will spend approximately two to three days per week on matters related to the March Order); rental of office space in the amount of \$645.00 per month; funds for hiring an administrative assistant/secretary and consultants, where necessary; as well as other reasonable and necessary expenses for such items as office equipment and supplies, printing and duplicating, telephone, fax, postage, travel and an annual financial review of management of funds designated for use by the Special Master.

The Court has determined that the County and Commonwealth each shall be responsible for one-half of the Special Master's budget and that the defendants shall make monthly payments to the Clerk of Court, United States District Court for the Eastern District of Pennsylvania as detailed in the accompanying Order. Deposits made by the defendants will be placed by the Clerk in an interest-bearing account. The Special Master will submit a monthly voucher for his fees and expenses to the Court for its review and approval. Any unspent

money in a given month will be carried over and applied to the Special Master's fees and expenses of the following month. In the event that the Court determines that the Special Master's duties are completed as of May 5, 1995, any surplus funds on deposit with the Clerk's Office will be refunded *pro rata* to the County and Commonwealth. Conversely, if the Court determines at any time that the Special Master will require supplemental funds, the Court may so order the County and Commonwealth to make additional deposits. The Court believes that this financial arrangement will facilitate the work of the Special Master and is the best way to ensure that Philadelphia *Pennhurst* class members receive habilitation in community living arrangements as quickly as possible.

ORDER OF REFERENCE

AND NOW, this 12th day of May, 1994 and for the reasons stated in the Court's Memorandum in this matter of May 12, 1994;

IT IS ORDERED:

1. Pursuant to Federal Rule of Civil Procedure 53, J.A. (Tony) Records is APPOINTED as a Special Master in the above-captioned action to evaluate whether the Commonwealth of Pennsylvania ("Commonwealth") and the County of Philadelphia ("County") are in compliance with the Court's Order of March 28, 1994 ("1994 Court Order"), a copy of which is attached hereto as Exhibit A and made a part of this Order;

*3 2. The Special Master shall have the power to supervise and monitor implementation of and compliance with the 1994 Court Decree; the Special Master shall file with this Court, with a copy to all parties, monthly reports addressing such compliance;

3. All parties shall cooperate fully with the Special Master and shall provide him with such information as he might request, either orally or in writing, and shall ensure that the Special Master has full access to all Philadelphia *Pennhurst* class members and Commonwealth and County officials, staff, facilities, records, and documents relating to Philadelphia *Pennhurst* class members;

4. The Special Master shall have access, with or without advance notice, to any part of any *Pennhurst* class member site, including but not limited to any and all provider agency sites, for purposes of inspection and/or conducting interviews with staff and class members to investigate and monitor compliance with the 1994 Court Order; at the request of the Special Master, the parties shall cooperate to facilitate such inspections and/or interviews;

5. The Special Master may provide information, assistance, and advice to all parties and conduct informal consultations and working sessions with any of the parties as he deems necessary to achieve compliance with the 1994 Court Order;

IT IS FURTHER ORDERED:

6. The estimated annual budget submitted by the Special Master to the Court in the amount of \$173,715.00 is hereby APPROVED, and the Commonwealth and County shall each be responsible for funding one-half of the annual budget;

7. Within seven (7) days of the date of this Order, the Commonwealth and County each shall deposit with the Clerk of Court, United States District Court for the Eastern District of Pennsylvania, a sum in the amount of \$7,238.13, representing each party's share of one-twelfth of the Special Master's annual budget;

8. On or before June 1, 1994, and on or before the first day of each succeeding month thereafter, up through and including April 1, 1995, the Commonwealth and the County each shall submit a sum in the amount of \$7,238.13 to the Clerk, representing their share of one-twelfth of the annual budget of the Special Master; all deposits made by the Commonwealth and County shall be placed by the Clerk of Courts in an interest-bearing account;

9. On or about the thirtieth day of each month, the Special Master shall submit a voucher for his fees and expenses for that month to the Court for its review and approval; such voucher shall contain a signature line for the Court accompanied by the statement, "Approved for Disbursement";

10. Any monies on deposit with the Clerk of Court that are unspent in a given month shall be carried over and applied to pay for future fees and expenses of the Special Master;

11. In the event that the Court determines that the Special Master's duties are completed as of May 5, 1995, any surplus funds on deposit with the Clerk's Office will be refunded *pro rata* to the defendants; however, if the Court determines at any time that the Special Master will require supplemental funds, the Court may so order the County and Commonwealth to make additional deposits;

*4 12. The Special Master shall keep a complete accounting of all of his fees and expenses, which shall be made available at the Court's request for its inspection.

