

## Dixon v. Kelly

United States District Court for the District of Columbia  
May 14, 1993, Decided ; May 14, 1993, Filed  
CIVIL ACTION NO. 74-285

**Reporter:** 1993 U.S. Dist. LEXIS 6511

WILLIAM DIXON, et al., Plaintiffs v. SHARON PRATT KELLY, et al., Defendants

**Subsequent History:** Motion granted by Dixon v. Barry, 967 F. Supp. 535, 1997 U.S. Dist. LEXIS 8692 (D.D.C., 1997)

**Prior History:** Dixon v. Weinberger, 405 F. Supp. 974, 1975 U.S. Dist. LEXIS 14644 (D.D.C., 1975)

**Judges:** [\*1] Robinson, Jr.

**Opinion by:** AUBREY E. ROBINSON, JR.

### Opinion

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter is before the Court on Plaintiffs' Motion for Contempt, Imposition of Fines and Appointment of a Special Master. Upon consideration of the evidence presented by the parties on February 8 and 9, 1993, the Court makes the following Findings of Fact and Conclusions of Law.

#### FINDINGS OF FACT

1. Plaintiffs are members of a class consisting of all persons who are or who may be hospitalized in a public hospital pursuant to D.C. Code § 21-501 et seq. and who need outplacement from that public hospital, as presently constituted, into alternative care facilities.

2. On December 23, 1975, this Court entered partial summary judgment in Plaintiffs' favor, finding that their statutory right to treatment in the least restrictive environment was violated.

3. A Consent Order and Final Plan to implement the 1975 decision were approved by the Court in 1980 ("Final Plan"), with a targeted completion date of December 31, 1985. Since the entry of this Consent Order and "Final Plan", the defendants have been consistently unable to meet their obligations, forcing Plaintiffs to seek or threaten to seek [\*2] findings of contempt and the appointment of a special master. In order to avoid repetition of past defaults and to ensure that the defendants' obligations were both well defined and achievable, the parties

undertook extended and detailed negotiations and developed a Service Development Plan (the "Plan"). The Plan was incorporated in another Consent Order approved by the Court on January 27, 1992.

4. Rather than addressing the needs of the entire class of Plaintiffs in this case (the "Dixon Class"), the Consent Order and Plan target four sub-groups of the Dixon Class, leaving intact the District's obligations with respect to the remainder of the Dixon Class. The 1992 Consent Order and Plan call for the creation of new service and housing capacity to address the needs of the four sub-groups, and specifically provide that existing capacity and other efforts be devoted to non-targeted populations in the Dixon Class.

The Consent Order and Plan outline a sequential process to phase in new service capacity and build a cohesive, organized system for the delivery of mental health services. They were developed to provide a detailed road map for the District to follow to ensure that chronically [\*3] mentally ill persons in the District live in the least restrictive environment possible to which they are entitled by law.

5. The activity targets and placement objectives required in the first implementation year were established to lay the foundation upon which other services could be built in subsequent years. Because of this, and because of defendants' persistent failure to fulfill their obligations in the past, the District's performance in 1992 was critical to the overall success of the Plan. The members of the Dixon Commission understood this fact, as did the District's point man on its *Dixon* implementation effort, Dr. Robert Keisling.

6. The past is prologue to the future. The District substantially failed to meet its 1992 obligations under the 1992 Consent Order and Plan. It was unable to provide the new housing, case management, intensive case management, family support, emergency services, personal care services, social activities, vocational services, and mobile community outreach and treatment teams required by the 1992 Plan.

7. The District's non-compliance is supported by other evidence. The most cogent proof of non-compliance is provided by Plaintiffs' Hearing [\*4] Exhibit 3, which summarizes both the District's 1992 obligations under the

Plan and its compliance as of January 1, 1993. This Exhibit shows in stark detail that the vast majority of the 1992 requirements under the Consent Order and Plan remained unmet as of January 1, 1993.

8. Dr. Danna Mauch, the expert the District hired to help it implement the Consent Order and Plan, testified that Exhibit 3 was an accurate portrayal of the District's performance in 1992. More specifically, she stated that the District had failed in 1992 to meet its obligations to provide the following new services and housing:

- . social clubs
- . family support
- . case management
- . supported work
- . sheltered work
- . vocational training
- . education
- . psychosocial rehabilitation
- . day habilitation
- . advocacy
- . personal care and home health aid
- . respite care
- . homemaker and chore services
- . mobile community outreach and treatment teams
- . full geriatric outreach teams
- . drop-in sites for the homeless
- . full compliment of new housing for Dixon Class members who are homeless or outplaced from St. Elizabeths.

9. Considering the fact that the Plan calls for the creation [\*5] of new housing and services for the target groups, Dr. Keisling's testimony also lends support to the accuracy of Plaintiffs' Hearing Exhibit 3. Dr. Keisling testified that as of the end of 1992:

- . far fewer homeless persons were housed than were called for under the plan,
- . new rehabilitation services had not begun to be provided,
- . PSI Associates had not begun to make referrals to provide new vocational services,

. contracts for new residential and support services had only been signed that day,

. contracts for new crisis residential, psychosocial rehabilitation (including vocational) and socialization services had not been finalized,

. no new geriatric outreach teams had been created,

. no new social club capacity had been developed, and

. no mobile community outreach and treatment teams had been created.

10. Thus the evidence is overwhelming that the District failed to meet its 1992 obligations under the 1992 Consent Order and Plan. This is true even though the District made a considerable effort at the end of 1992 to meet its obligations. Since the success of the first year's efforts are central to the overall success of the plan, this failure is [\*6] very serious.

11. The District's failure to meet its obligation under the 1992 Consent Plan cannot be excused because it faced barriers to compliance. There was sufficient money and expertise to do the job. The District's cumbersome procurement process is no excuse. It was well known by the Defendants and clearly recognized by Dr. Keisling early in 1992 that the District could not meet its 1992 obligations unless drastic measures were taken to fix the contracting problems, and this point was made clear to the Director of the Department of Human Services and the City Administrator as early as May 1992.

12. The District made no effective inroads into the contracting problem for the first eleven months of 1992. Throughout this time, however, it claimed full compliance with the Consent Order and Plan. It represented at the August 17, 1992 status conference in this case that it "had worked out all [its] problems."

13. Additionally, after plaintiffs' counsel warned Mayor Kelly in an October 5, 1992 letter that the Plan was in "grave jeopardy" because critical steps -- including the reformation of the District's contracting and procurement process -- had not taken place, the District responded [\*7] by stating that it was in substantial compliance with the Consent Order and Plan, including with respect to the contracting process. Finally, at the November 17, 1992 status hearing, the District again claimed substantial compliance.

14. The first public acknowledgment by the District that it would not be able to meet its 1992 obligations was Mayor

Kelly's December 31 emergency order allowing 120-day contracts to be signed by the Department of Human Services. It is clear on the face of the order and the facts of this case that the impetus behind the entry of the order was the potential imposition of sanctions by this Court, rather than merely an abiding concern for the welfare of the Dixon class. The order itself cites the possibility of sanctions for non-compliance in all but one of its paragraphs, and calls the obligations to which the District had agreed to be bound less than one year before "impossible" to meet.

15. Mayor Kelly's issuance of the emergency order does not make the necessary changes to the District's contracting process. Even had the order issued earlier in 1992, the District would be faced with renegotiating the 120-day contracts permitted by the order as they [\*8] neared completion. As was admitted by the District officer in charge of contracting, this is not "the best way to run a railroad."

### ***CONCLUSIONS OF LAW***

The District's failure to fulfill its obligations under the 1992 Consent Order and Plan stem from incapacity, not unwillingness, to do what it had agreed to do and when it was supposed to do it. This failure is consistent with its past failures. Its efforts have not been lacking, but they have been insufficient, ineffective and untimely. The Court therefore makes no finding of contempt with respect to its latest Order. However, it does declare emphatically that twelve years is long enough for the District to perfect and effectuate a system which protects the legal rights and lives of the mentally ill in the community consistent with its statutory mandate and the Judgment of this Court.

Because the District's failure to meet its 1992 obligations under the 1992 Consent Order is not an aberration but a continuation of past practices, the appointment of a special master is appropriate. This is especially true where the

District has demonstrated that it can work diligently to meet its obligations under consent agreements when it [\*9] is threatened with the Court's contempt powers.

The belated efforts of the District demonstrated a level of commitment that should ensure significant progress toward fulfilling its responsibilities under the Plan within the near future. Accordingly, the Court limits the tenure of the Special Master to a term to begin on June 1, 1993 and end on June 1, 1994, during which the District's 1993 performance will be monitored. If conditions warrant, the term maybe extended by the Court. The Special Master shall submit bi-monthly status reports to the Court regarding the District's progress and shall submit a detailed analysis of overall compliance with the Plan's requirements by March 31, 1994.

Based on her public health service background, her knowledge of the District's problems, and the benefit that can be gained from her expertise, oversight, and guidance, the logical choice is Dr. Danna Mauch and by Order of this date, she is so appointed.

Notwithstanding, the Court's lack of a finding of contempt, Plaintiffs' counsel are entitled to their counsel fees and costs in pursuing the instant motion. They have prevailed. Additionally, the Consent Order specifically provides that "notwithstanding [\*10] any other provision of this agreement, Plaintiffs may seek attorneys fees and costs of enforcement of this Order should Plaintiffs prevail in any motion they file alleging non-compliance with the Court's Order, this agreement or the Plan."

Aubrey E. Robinson, Jr.

United States District Judge

DATE: May 14, 1993