

ENTERED

March 21, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

M.D.; bnf STUKENBERG, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 2:11-CV-00084
	§	
GREG ABBOTT, <i>et al</i> ,	§	
	§	
Defendants.	§	

APPOINTMENT ORDER

Federal Rule of Civil Procedure 53(a)(1)(C) provides that a court may appoint a master to address “post-trial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.” The Court reiterates its earlier findings that the post-judgment matters in this case cannot be addressed effectively and timely by the Court. (D.E. 368 at 245-46). The issues in this case are especially sophisticated, wide-ranging, and protracted, involving complicated facts and administrative problems in crafting and implementing the injunction, which will be difficult to evaluate, quantify, and administer. Resolution of these issues will require highly specialized and technical knowledge. A Special Master who is an expert in a field relevant to foster care systems is better suited to craft, monitor, and implement the necessary reforms.

The Court appoints co-Special Masters Francis McGovern and Kevin Ryan pursuant to Federal Rule of Civil Procedure 53 and the Court’s inherent powers. The duties and terms of the Special Masters will be as followed:

- (1) The role of the Special Masters is to effectuate the Court’s Memorandum Opinion and Verdict of the Court (“Memorandum Opinion”) (D.E. 368) by formulating, monitoring, and creating an Implementation Plan in conjunction with the Court so as to administer

the Memorandum Opinion by bringing the State into compliance with constitutional standards of care.

- (2) The Special Masters, as agents of the Court, shall function as the Court's representative and not on behalf of any party.
- (3) The Special Masters shall at all times observe high standards of conduct so as to preserve the integrity, dignity, and independence of the Court and the judicial system. In this regard, the Special Masters shall at all times ensure compliance with the ethical rules for special masters, including, but not limited to, 28 U.S.C. § 455, Canon 1 of the Code of Conduct for United States Judges, and Canon 1 of the Code of Conduct for Judicial Employees.
- (4) The Special Masters shall proceed with all reasonable diligence and shall commence their duties no later than April 1, 2016.
- (5) The parties may file written objections to any submission relating to the Special Masters. The written objections must be electronically filed no later than 15 days after a copy is served. All objections must be in writing and submitted within this time period, or else they are waived.
- (6) Within 180 days of the present Order, the Special Masters must submit an Implementation Plan to reform Texas's foster care system, which addresses the constitutional deficiencies in every identified area of the Texas Department of Family and Protective Services.
- (7) Within 210 days of the present Order, the Court will hold a hearing on the Implementation Plan where it will hear the parties' objections, and decide which, if any, provisions to accept.

(8) In crafting the Implementation Plan, the Special Masters and their designees shall have access to all relevant information, records, personnel, and reports, and shall have the authority to require reports that would be helpful, unless the information is protected by privileges, other limitations on disclosure, or any other provision of the Federal Rules of Civil Procedure. The Special Masters shall assure that the Plaintiffs and Defendants have a full opportunity to consult and be involved with the development of the Implementation Plan, though the Special Masters must ultimately be guided by the Goals listed in the Memorandum Opinion. (D.E. 368 at 248-54). The provisions in the Implementation Plan will be viewed as recommendations. If the Court finds any parts lacking or any constitutional violation unaddressed, the Court will ask the Special Masters to present additional provisions at a later date. The Special Masters shall file the Implementation Plan with the Court, attaching a certificate of service to the parties. All submissions of the Special Masters shall be electronically filed with the Court.¹

(9) The Implementation Plan shall include recommendations to effectuate all of the Goals listed in the Court's Memorandum Opinion, (D.E. 368 at 248-54), as well as any other recommendation the Special Masters deem is necessary to effectuate the Order of the Court.

(10) The Implementation Plan shall also include:

- (a) Implementation Dates. The Plan shall contain final implementation dates by which each provision will be fully implemented. The plan shall also include interim dates, prior to the final implementation date, by which each provision

¹ The Special Masters shall seek access to using the Court's Case Management/Electronic Case Files (CM/ECF) system.

shall be partially implemented, and shall specify the degree of implementation required by each of the interim implementation dates for each provision. Provisions should be implemented at the earliest time practicable. Any need to prioritize implementation will be motivated by which provisions best address the State's constitutional violations.

- (b) Implementation Steps, Processes, and Tasks. The Plan shall specify the steps and tasks necessary to achieve full implementation and to meet the interim and final implementation dates. The Plan shall designate timelines by which the steps and tasks are to be accomplished and shall designate appropriate staffing levels and personnel to assure timely implementation of the Plan. The Plan shall also identify who shall be responsible for the steps and tasks, including outside contractors. This portion of the Implementation Plan shall be updated every six months, and the updates shall list tasks accomplished and additional steps and tasks that may have been identified as additionally necessary to achieve full implementation. The updates shall include timelines for interim and full implementation, as well as the designation of personnel for these additional steps and tasks.
- (11) The Court will review the Special Masters' recommendations de novo.
- (12) After the Implementation Plan hearing, the Special Masters shall submit a Progress Report every 180 days concerning the status and progress made by the Defendants. As part of each Progress Report, and at other times as the Special Masters deem necessary, the Special Masters may make recommendations to the Court regarding the need for and nature of additional measures to enforce the Memorandum Opinion and any

subsequent orders. Any additional recommendation must be accompanied by proposed implementation dates, steps, processes, and tasks as detailed in (11)(a) and (11)(b).

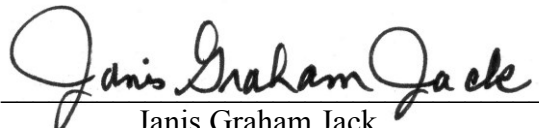
- (13) Following the filing of any Progress Report or additional recommendation, the parties shall appear at a status conference, at which they will be given the opportunity to address the Special Masters' findings and recommendations. The status conference will be held 30 days after the Special Masters' submission. If the 30th day falls on a Saturday, Sunday, or legal holiday, the status conference will be held on the first day that is not a Saturday, Sunday, or legal holiday, pursuant to Federal Rule of Civil Procedure 6.
- (14) The Special Masters and their designees may have unlimited communications with the parties and their staff in aid of this Order's goals.
- (15) The Special Masters may require additional reports or studies from the parties at any time.
- (16) There shall be no *ex parte* communication between the Special Masters and the Court. If communication with the Court becomes necessary, the Court will hold a phone conference with at least one of the Special Masters and both parties to resolve the matter.
- (17) The Special Masters shall not communicate with the media without application to and approval from the Court.
- (18) The Special Masters shall not communicate with any legislative or investigative body without application to and approval from the Court.
- (19) The Special Masters shall not make public comments on the merits of this action.

- (20) The Special Masters shall not disclose confidential information received in the course of their official duties without application to and approval from the Court.
- (21) All restrictions on disclosure continue to apply after the conclusion of the Special Masters' service, unless modified by the Court.
- (22) The Special Masters must maintain, but not file, the following records, which will be accessible to all parties:
 - (a) Informal notes regarding any matter.
 - (b) Documents received by the Special Masters from the parties.
 - (c) A complete record of the evidence considered by the Special Masters in crafting recommendations.
- (23) The Special Masters must maintain and file the following records:
 - (a) All billing records. These records shall be filed under seal.
 - (b) Formal written reports or recommendations regarding any matter.
 - (c) Documents created by the Special Masters that are docketed in the Court.
- (24) Compensation:
 - (a) The Court has considered the fairness of imposing the likely expenses on the parties and has taken steps to protect against unreasonable expense or delay. The Defendants shall pay the Special Masters' compensation of \$345.00 per hour and reasonable expenses. Payment shall be made directly to the Special Masters. Reasonable expenses include, but are not limited to, transcriptions, photocopy fees, travel and attendant expenses, and mail and delivery costs. Reasonable expenses are not included in the Special Masters' annual salary.

- (b) If the Special Masters reasonably find that additional services are required, the Special Masters shall apply to the Court for the approval of these expenses.
 - (c) The Special Masters may submit an application to increase the compensation, should circumstances so require.
 - (d) The State shall pay the Special Masters their compensation on a monthly basis.
 - (e) The Special Masters shall submit bills for their compensation and reasonable expenses to the State, as well as file these bills under seal with the Court, on a monthly basis. The State shall approve payment within 30 days of receipt of the monthly bill. If the State disputes a bill, Defendants shall file its objections with the Court no later than 15 days after receiving the bill and/or request additional clarifying information or documentation to the Special Masters, with a copy served on Plaintiffs. The Special Masters shall have 15 days in which to respond and to provide the additional information and/or documentation requested, with a copy served on Plaintiffs. If within 45 days of presentation of the Special Masters' bill there is still a dispute, the parties shall submit the dispute to the Court for resolution. At this time, Plaintiffs, Defendants, and the Special Masters shall file a joint statement regarding the disputed payment.
- (25) The Special Masters do not have the authority to impose sanctions. The Special Masters may, however, submit recommendations to the Court that sanctions should be imposed against any party or non-party, along with an explanation of why the sanction is appropriate.
- (26) The Special Masters shall not accept any gifts or favors from the parties, *de minimus* or otherwise.

- (27) The Special Masters shall serve until the Court determines, upon Defendants' application, that the Special Masters are no longer necessary.
- (28) The Court maintains the authority to revise this Order *sua sponte*, or upon application of the parties or the Special Masters.
- (29) The parties are ORDERED to cooperate completely and in good faith with the Special Masters in all matters, pursuant to the foregoing provisions. In this regard, if to accomplish their duties the Special Masters must undertake necessary measures not specifically referred to in the preceding provisions, the parties shall not object or resist merely because the measures were not specified.
- (30) Jurisdiction of this action is retained by the Court.

SIGNED and ORDERED this 21st day of March, 2016.



Janis Graham Jack
Senior United States District Judge