

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

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NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

JOY EVANS, et al.,)
Plaintiffs,)
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and)
)
UNITED STATES OF AMERICA,)
Plaintiff-Intervenor,)
)
)
v.)
)
)
ANTHONY WILLIAMS, et al.,)
Defendants.)
)
)
)

Civ. No. 76-293 (SSH)

ORDER REGARDING
THE APPOINTMENT OF AN INDEPENDENT COURT MONITOR

Upon consideration of the record in this case, and the joint motion of the parties and the recommendation of the Special Master, the Court finds that:

In paragraph 6 of the Court's 1978 Final Judgment and Order (hereinafter "1978 Final Order"), the Court ordered Defendants to retain the full-time, expert services of a person (i.e., the Developmental Disabilities Professional or "DDP") (hereinafter called the "Monitor"), to assist the Court in overseeing the implementation of the provisions of the Order. Specifically, the Court ordered the new entity to "monitor the implementation of this and any further Order of the Court." 1978 Final Order ¶ 6. The Court ordered Defendants to give the Monitor full independent access to all premises, records, documents, class members, personnel and other necessary information to assure that the provisions of the Order are carried out, and the Court ordered that the Monitor report directly to the Director of the District of Columbia Department of Human Resources.

To comply with this Order, Defendants retained the services of the current Monitor through a contract with a community provider, the District of Columbia Arc, Inc. Thus, the current Monitor serves as the Court's Monitor while employed as a contractor of the District of

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Columbia.

The current contractual arrangement between the Defendants and the Monitor is not appropriate.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

Creation of an Independent Court Monitor's Office

1. In the exercise of its inherent powers, the Court hereby establishes an independent Court Monitor that will be directly responsible to the Court. After consideration of the recommendations of the parties, as described below, the Court will appoint as Court Monitor a person or organization determined by the Court to be qualified to monitor the implementation of this Court's Orders and to carry out other duties related to the monitoring of this Court's Orders. If the parties agree upon the establishment of the Quality Trust which is to be developed pursuant to the 2000 Plan for Compliance and filed with the Court, the Court Monitor shall be physically co-located with the monitoring body of the Quality Trust so as to enhance collaboration with regard to monitoring activities. Although there is to be physical proximity and collaboration between the Court Monitor and the Quality Trust, the Court Monitor shall remain directly responsible to the Court, and not to the Quality Trust. The Court Monitor shall continue to monitor Defendants' compliance with existing Court Orders in this case until the case is no longer subject to Court supervision and shall not supplant the systemic monitoring conducted by the Quality Trust. As each Court Order is vacated by the Court, monitoring of corresponding operations shall be transferred from the Court Monitor to the Quality Trust, and shall no longer be subject to Court supervision. The parties and the Court shall consider adjustment to the Court Monitor's annual budget, as Court Orders are vacated in this case, consistent with the procedures set forth in paragraph three of this Order for developing an annual budget.

Selection of the Court Monitor

2. For a period of thirty days after the filing of this Order, the parties, in collaboration with the Special Master, shall endeavor to agree on a candidate for selection as the Court Monitor. In the event that the parties are unable to agree upon a candidate for the position of Court Monitor, the parties shall each submit to the Court no more than three names and qualifications of candidates for the position. The parties shall submit this information regarding the candidates within seven days after the close of the thirty day negotiation period. The Court shall thereafter make a determination upon consideration of the submissions and positions of the parties.

Submission of the Court Monitor's Budget

3. Fourteen days following the Court's selection of the Monitor, the parties and the Monitor,

in collaboration with the Special Master, shall endeavor to agree upon the financial terms and conditions of the Monitor's compensation and reimbursement for expenses, including the cost of administrative overhead, staff and consultants.

In the event that the parties and the Monitor are unable to reach agreement on the financial terms and conditions of the Monitor's compensation and reimbursement, the Monitor shall submit to the Court, with copies to the Master and the parties, a proposed annual budget. Should any party object to the proposed annual budget, any party may submit their objections in writing to the Court within fourteen days of the submission of the Monitor's proposed annual budget. The Court shall thereafter make a determination on the final budget upon consideration of the positions of the parties and the Monitor.

Reimbursement and Payment Provisions

4. The cost of the Court Monitor, including the cost of any independent experts hired by the Court Monitor as provided herein and in the proposed budget, shall be borne by the Defendants in this action. The Court Monitor shall notify the parties of the Monitor's intention to retain experts not less than three business days in advance, except in case of an emergency, when the Monitor shall provide notice as soon as practicable. Defendants shall reimburse all reasonable expenses incurred by the Court Monitor, independent experts and staff in the course of the performance of their duties, including but not limited to the rental of office space, office expenses, salaries of staff, telephone expenses, photocopying, travel, data processing, postage and bookkeeping.

5. Defendants shall deposit and maintain in the Registry of this Court the amount of money agreed upon by the parties or ordered by the Court to assure prompt payment of the costs incurred by the Court Monitor. This deposit and all other deposits pursuant to this Order shall be held in the Court Registry Investment System and shall be subject to the standard registry fee imposed on depositors.

6. The parties and the Court Monitor shall recommend to the Court, within twenty days following the appointment of the Monitor, a method of periodic payment of the Monitor's expenses.

Responsibilities and Powers of the Court Monitor

7. The Court Monitor shall regularly monitor the class members' community residential placements and day or other programs to determine Defendants' implementation of this Court's Orders. The Court Monitor shall devote such time as is necessary to fulfill the purposes of the duties and responsibilities of the Court Monitor pursuant to this Order.

8. The Court Monitor shall consult with the parties and the Special Master concerning the methodologies to be used by the Monitor to assess Defendants' compliance with and

implementation of Court Orders and shall report to the Court the methodologies that will be used for these purposes and the reasons for adopting those methods. The Court Monitor shall submit a draft written report regarding Defendants' compliance with the Orders in this case to the parties for comment on a quarterly basis. The parties shall have ten days to submit a response to the report to the Court Monitor. The Monitor shall consider the parties' comments and within ten days of receipt of the comments, shall file a final report with the Court, which shall be served upon the parties.

9. The Court Monitor shall have access to the persons, residences, facilities, buildings, programs, services, documents, records, personnel and materials the Monitor deems necessary or appropriate in performing the duties of the Monitor that are related to class members or the care and/or services provided to class members in this case pursuant to existing Orders in this case. Such access shall include all departmental and/or individual class member medical and other records. The Monitor may obtain copies of all such relevant documents, records, and materials. No advance notice of any visit or inspection shall be required.

10. The Court Monitor may conduct confidential interviews and meetings with any class member. The Court Monitor may conduct confidential interviews with Defendants' employees, as well as all provider staff who directly or indirectly serve class members. In addition, the Court Monitor may engage in informal conferences with such employees and staff, who shall cooperate with the Court Monitor and respond to all inquiries and requests related to compliance with existing Court Orders in this case.

11. Defendants shall provide the Court Monitor information upon request relevant to Defendants' implementation of existing Court Orders. The Court Monitor may require written reports from Defendants or any staff regarding Defendants' compliance. Defendants shall notify the Court Monitor immediately upon the death of a class member. Defendants shall also provide the Monitor with prompt notice of pending or ongoing investigations of serious unusual incidents involving class members. Defendants shall forward to the Court Monitor copies of any completed incident reports related to deaths, autopsies and/or death summaries of class members as well as all final reports of investigations that involve class members.

12. The Court Monitor may select and employ necessary administrative, clerical and support staff, as well as independent experts, of the Monitor's choosing, to assist the Monitor in fulfilling its responsibilities. The Court Monitor shall notify the parties of the Monitor's intention to retain experts not less than three business days in advance, except in case of an emergency, when notice shall be provided as soon as practicable. The Monitor's staff and experts shall be granted the same degree of accessibility as set forth above for the Monitor.

13. The Court Monitor shall cooperate with the Special Master in carrying out the Master's responsibilities under the Master's Order of Reference and any other duties assigned to the Master by this Court. The duties of the Court Monitor shall be to observe, monitor, report findings, and make recommendations to the parties, Special Master and the Court concerning

the implementation of this Court's Orders. The Court Monitor shall confer regularly and informally with Defendants on matters relating to compliance. The Court Monitor may have *ex parte* contacts with the parties, the Special Master or the Court at any time.

14. The findings, recommendations and reports of the Court Monitor shall not have the weight of findings and recommendations made pursuant to an Order of Reference under Rule 53 of the Federal Rules of Civil Procedure, but may be introduced as evidence when relevant and admissible in accordance with the Federal Rules of Evidence.

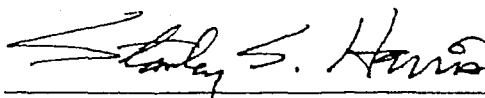
15. All actions of the Court Monitor shall be under the direct control and supervision of the Court. The Court Monitor shall not be empowered to direct Defendants or any of their subordinates to take or to refrain from taking any specific action to achieve compliance with existing Orders in this case. The sole power to direct compliance shall remain with the Court.

16. The Court Monitor shall be discharged or replaced only upon the Order of this Court. In the event that the Court discharges the Monitor or in the event that the Court Monitor resigns or is no longer able to continue to serve as the Court Monitor, the parties, in collaboration with the Special Master, shall select a mutually acceptable replacement, as soon as possible, who shall serve in keeping with the provisions of this Order. In the event that the parties are unable to agree on a replacement, they shall submit the names of candidates to the Court which shall make the final determination consistent with the procedures set forth in paragraph two above.

17. This Order shall replace paragraph six of the 1978 Final Order. All other Orders pertaining to the Court's Monitor (referred to in those documents as the Developmental Disabilities Professional or "DDP") shall remain in effect.

WHEREFORE, the parties to this action having agreed to the provisions in this Order set forth above, and the Court being advised in the premises, this Order is hereby entered as the ORDER and JUDGMENT of this Court.

IT IS SO ORDERED, this 21st day of November, 2000, at Washington, DC.



Honorable Stanley S. Harris
United States District Judge