

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERKS OFFICE  
U.S. DISTRICT COURT E.D. N.Y.  
★ MAY 23 2008 ★  
P.M. \_\_\_\_\_  
TIME A.M. \_\_\_\_\_

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JOSEPH S. and STEVEN W.; DISABILITY  
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ADVOCATES, INC.; and SIDNEY  
:  
HIRSCHFELD, Director, Mental Hygiene  
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Legal Service, Second Judicial Department,  
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Plaintiffs,  
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:  
- against -  
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:  
MICHAEL F. HOGAN, in his official  
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capacity as Commissioner of the New York  
:  
State Office of Mental Health; THE NEW  
:  
YORK STATE OFFICE OF MENTAL  
:  
HEALTH; RICHARD F. DAINES, in his  
:  
official capacity as Commissioner of the New  
:  
York State Department of Health; THE NEW  
:  
YORK STATE DEPARTMENT OF  
:  
HEALTH; and DAVID A. PATERSON, in his  
:  
official capacity as Governor of the State of  
:  
New York,  
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Defendants.  
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**ORDER**  
CV-06-1042 (BMC)(SMG)

COGAN, District Judge.

This case is before me on the Report & Recommendation of Magistrate Judge Steven M. Gold dated April 21, 2008 [93], in which he recommended denial of defendants' motion to dismiss, except as to the Nursing Home Reform Act ("NHRA") claims that he found time-barred. Plaintiffs and defendants have timely objected. Having conducted a *de novo* review, I adopt the Report & Recommendation as the Order of this Court and overrule the parties' objections, as I agree with the analysis of each point addressed by Judge Gold. The only issue warranting additional comment is plaintiffs' hyperbolic invocation of Muller v. New York, 686 N.Y.S.2d 652 (N.Y. Ct. Cl. 1999), which plaintiffs describe as the progenitor of a "Muller line of

cases.” There is no “Muller line of cases,” and a single Court of Claims decision cannot be said to constitute the law of New York. See King v. Order of United Commercial Travelers, 333 U.S. 153, 160-61, 68 S.Ct. 488, 492-93 (1948); Singleton v. City of New York, 632 F.2d 185, 199 (2d Cir. 1980). I agree with Judge Gold that the reasoning of that case is not persuasive.

It is therefore ORDERED that defendants’ motion to dismiss is denied except as to the time-barred NHRA claims.

**SO ORDERED.**

Dated: Brooklyn, New York  
May 21, 2008

/s/(BMC)

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U.S.D.J./