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United States District Court, N.D. Illinois, Eastern
Division.

Willie WILLIAMS, etc., Plaintiffs,
v.
Michael P. LANE, et al., Defendants.

No. 81 C 355. | Oct. 11, 1988.

Opinion

MEMORANDUM OPINION AND ORDER

SHADUR, District Judge.

*1 In accordance with leave granted by this Court, on September 30, 1988 defendants submitted their comments as to the Order of Reference (the “Order”) issued by this Court September 23 confirming the appointment of Special Master Norval Morris and identifying the terms and conditions of that appointment. This memorandum opinion and order treats with each of the suggestions made by defendants, only one of which results in a modification of the Order and is therefore embodied in a one-paragraph supplement to the Order. To facilitate analysis, this opinion will first list each paragraph number of the Order to which defendants address any suggestion, then treat with the suggestion made as to that paragraph and this Court’s ruling on that suggestion.

2. As in every other instance where prior approval of this Court is required before action is taken by Special Master Morris, such matters will be handled in exactly the same way as any other motion brought before this Court—with notice to the litigants of the nature of the approval sought and of the date on which the motion will be presented to this Court. In every instance, of course, this Court will then deal with the matter appropriately in terms of permitting comments or objections by the litigants. Because such matters can occupy a wide range, no advance specification of the amount of time involved, or any other aspects of the procedure, would be possible or appropriate. Accordingly, no change is called for in the language of Order ¶ 2.

3(a). If and to the extent any exception to the free-access provisions of this subparagraph may be in order, they will be best dealt with on a case-by-case basis. As for the other aspect of defendants’ suggestion, this Court has already rejected as a policy matter the idea that advance

notification must be given before all visits to Stateville by Special Master Morris. That kind of requirement could (and almost surely would) undercut the purpose and effectiveness of Special Master Morris’ appointment, and it would be entirely unjustified given all the factors that forced this Court to resort to appointment of a Special Master. Once again no change in the Order is called for.

3(b). Because this provision mandates defendants to exercise no more than their best efforts, there is no reason to comply with their suggestion that their responsibility to “encourage” full cooperation be changed to a lesser obligation to “facilitate” such cooperation.

3(c). There is no need to modify the Order in the manner defendants request, because relevancy is an implicit limitation on Special Master Morris’ entire involvement in Stateville matters.

5. Defendants are correct in identifying this Court’s inaccurate description of Fed.R.Civ.P. 53(e)(2) in the designated part of the Order. Accordingly the words “or conclusions” will be deleted from the last sentence of Order ¶ 5.

6. For the same reason discussed as to Order ¶ 2, no change will be made to specify the litigants’ rights to receive notice of, and to comment on or object to, requests made by Special Master Morris. As for the question of financial liability, this Court can properly deal only with the parties before it (indeed, a direct order against the State of Illinois as a nonparty could pose special problems of the Eleventh Amendment, waiver of immunity and so on). To the extent that state law (in this instance the State Indemnification Act) may provide defendants with a source of funds to meet their obligations under the Order, that issue need not be dealt with in the Order itself.

*2 7. That last comment as to Order ¶ 6 is applicable here as well. As for the question whether funds should be made available before rather than after services are rendered or expenses are incurred, this Court thought through that subject matter fully—after the parties had their say—in entering the Order. To the extent that any cost savings may be realized by advance arrangements with the State of Illinois, this Court will simply leave that to the establishment of appropriate cooperative efforts between the State and Special Master Morris.

9. As for defendants’ suggestion for addition of a new Order ¶ 9 covering the discharge of Special Master Morris, there is no need now to determine the precise time and circumstances for that to occur. This Court’s retention of jurisdiction under Order ¶ 8 carries with it the full power to deal with that situation at the appropriate time.

