

# Supreme Judicial Court and Appeals Court of Massachusetts

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### SUPREME JUDICIAL COURT for Suffolk County Case Docket

**ARIANNA S., FREESIA R., JOAB S., and MIKAELA R., all minors, by and through their next friend ROBERT H. WEBER, ROBERT ALLEN G., and RANDALL GARSIDE vs. COMMONWEALTH OF MASSACHUSETTS and THE TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS**  
SJ-2004-0282

#### CASE HEADER

<b>Case Status</b>	Dismissed: matter moot	<b>Status Date</b>	10/30/2007
<b>Nature</b>	Superintendence c 211 s 3	<b>Entry Date</b>	06/28/2004
<b>Sub-Nature</b>	Assgmt Counsel/Indigency	<b>Single Justice</b>	Greaney, J.
<b>TC Ruling</b>	Not applicable	<b>TC Ruling Date</b>	
<b>SJ Ruling</b>	Dismissed-Moot	<b>TC Number</b>	
<b>Pet Role Below</b>	Not applicable	<b>Full Ct Number</b>	
<b>Lower Court</b>		<b>Lower Ct Judge</b>	

#### INVOLVED PARTY

#### ATTORNEY APPEARANCE

**Arianna S.**  
Petitioner

[Joshua C. Krumholz](#), Esquire  
[Edward J. Naughton](#), Esquire  
[Warren E. Tolman](#), Esquire  
[Lawrence R. Kulig](#), Esquire

**Freesia R.**  
Petitioner

[Joshua C. Krumholz](#), Esquire  
[Edward J. Naughton](#), Esquire  
[Warren E. Tolman](#), Esquire  
[Lawrence R. Kulig](#), Esquire

**Joab S.**  
Petitioner

[Joshua C. Krumholz](#), Esquire  
[Edward J. Naughton](#), Esquire  
[Warren E. Tolman](#), Esquire  
[Lawrence R. Kulig](#), Esquire

**Mikaela R.**  
Petitioner

[Joshua C. Krumholz](#), Esquire  
[Edward J. Naughton](#), Esquire  
[Warren E. Tolman](#), Esquire  
[Lawrence R. Kulig](#), Esquire

**Robert H. Weber**  
Petitioner

[Joshua C. Krumholz](#), Esquire  
[Edward J. Naughton](#), Esquire  
[Warren E. Tolman](#), Esquire  
[Lawrence R. Kulig](#), Esquire

<b>Robert Allen G.</b> Petitioner	<a href="#">Joshua C. Krumholz</a> , Esquire <a href="#">Edward J. Naughton</a> , Esquire <a href="#">Warren E. Tolman</a> , Esquire <a href="#">Lawrence R. Kulig</a> , Esquire
<b>Randall Garside</b> Petitioner	<a href="#">Joshua C. Krumholz</a> , Esquire <a href="#">Edward J. Naughton</a> , Esquire <a href="#">Warren E. Tolman</a> , Esquire <a href="#">Lawrence R. Kulig</a> , Esquire
<b>Commonwealth of Massachusetts</b> Respondent	<a href="#">Ronald F. Kehoe</a> , Assistant Attorney General <a href="#">David R. Kerrigan</a> , Assistant Attorney General
<b>Trial Court of the Commonwealth of Mass</b> Respondent	<a href="#">Ronald F. Kehoe</a> , Assistant Attorney General <a href="#">David R. Kerrigan</a> , Assistant Attorney General
<b>Stephen F. Hanlon</b> Out-of-state attorney	
<b>Cecily E. Baskir</b> Out-of-state attorney	
<b>Robin L. Rosenberg</b> Out-of-state attorney	
<b>Comm for Public Counsel Services</b> Other interested party	<a href="#">William J. Leahy</a> , Esquire

#### DOCKET ENTRIES

Entry Date	Paper	Entry Text
06/28/2004		Case entered.
06/28/2004		Filing fee paid. (\$315)
06/28/2004	#1	Petition for Relief pursuant to c. 211, s. 3 filed by Atty Joshua Krumholz.
06/28/2004	#2	Memorandum in Support of Petitioners' Motion to Appoint Special Master filed by Atty Joshua Krumholz.
06/28/2004		(Proposed) Reference to Special Master filed by Joshua Krumholz.
06/28/2004	#3	MOTION for Appointment of Special Master and Request for Hearing filed by Joshua Krumholz. (11/01/04 NO ACTION TAKEN AT THIS TIME. By the Court. (Greaney, J.) (see paper #27)
06/28/2004	#4	Affidavit of Lawrence H. Stiffman filed with Exhibit A-D (see attachment).
06/28/2004	#5	Affidavit of Robert L. Spangenberg filed by Atty Joshua Krumholz with Exhibits A-B (see attachment).
06/28/2004		(Proposed) Order Granting Motion to Certify Petitioner Class filed by Atty Joshua Krumholz.
06/28/2004	#6	MOTION to Certify Petitioner Class with Request for Hearing filed by Atty Joshua Krumholz. (11/01/04 NO

		ACTION TAKEN AT THIS TIME. By the Court. (Greaney, J.) (see paper #27)
06/28/2004	#7	Memorandum in Support of Motion to Certify Petitioner Class filed by Atty Joshua Krumholz with Exhibit A (see attachment).
06/28/2004	#8	MOTION for Admissions Pro Hac Vice filed by Atty Joshua Krumholz with Exhibits A-C (see attachment). (11/01/04 MOTION for Admissions Pro Hac Vice is ALLOWED WITHOUT HEARING. By the Court. (Greaney, J.)) (see paper #27)
06/28/2004	#9	Affidavit Appendix Exhibits A-T (see attachment) filed by Atty Joshua Krumholz.
06/28/2004	#10	MOTION for Leave to File Brief of Amici Curiae submitted by Jeffrey Jude Pokorak Associate Professor and Director, Clinical Programs, Suffolk University Law School. (11/01/04 NO ACTION TAKEN AT THIS TIME. By the Court. (Greaney, J.)) (see paper #27)
06/28/2004	#11	Brief of Amici Curiae in Support of Petitioners submitted by Jeffrey Pokorak, Associate Professor and director, Clinical Programs Suffolk University Law School.
07/20/2004	#12	Notice of Appearance filed for Commonwealth of Massachusetts by Ronald F. Kehoe with attached certificate of service.
07/20/2004	#13	Defendants' Motion To Extend Time To File Response To Petition, filed by Ronald F. Kehoe with attached certificate of service.
07/21/2004	#14	Petitioners' Response To Defendants' Motion To Extend Time To File Response To Petition, filed by Edward J. Naughton with attached certificate of service.
08/30/2004	#15	Defendants' Motion To Further Extend Time To File Response To Petition, filed by Ronald F. Kehoe with attached certificate of service.
09/17/2004	#16	Petitioner's Response to Defendants' Motion to Further Extend Time to File Response to Petition and Request for Status Conference filed by Atty Joshua Krumholz.
09/21/2004	#17	ORDER: "The defendants answer or other responsive pleading is to be filed on or before October 8, 2004. Once a filing is made, I will schedule a conference on status and future proceedings. The defendants are advised that there will be no further continuances granted on their duty to answer or respond." (Greaney, J.)
09/22/2004	#18	Notice to counsel, regarding paper number 17 filed.
10/12/2004	#19	MOTION To Stay Proceedings Pending Study Commission Report And Action By The Legislature, filed by AAG Ronald F. Kehoe with attached Exhibits A-E. (11/01/04 MOTION to Stay Proceedings is ALLOWED WITHOUT HEARING. By the Court. (Greaney, J.)) (see paper #27) (EXHIBITS A-B IMPOUNDED)
10/12/2004	#20	MOTION To Dismiss Petition For Failure To State A Claim Upon Which Relief May Be Granted, filed by AAG Ronald F. Kehoe with attached certificate of service. (11/01/04 NO

		ACTION TAKEN AT THIS TIME. By the Court. (Greaney, J.) (see paper #27)
10/12/2004	#21	Memorandum In Support Of Motion To Dismiss Petition For Failure To State A Claim, filed by AAG Ronald F. Kehoe with attached certificate of service. (PAGES 4-7 IMPOUNDED) (SEE P. # 31 FOR SUBSTITUTE PAGES)
10/12/2004	#22	Opposition To Motion To Appoint Special Master, filed by AAG Ronald F. Kehoe with attached certificate of service.
10/12/2004	#23	Opposition To Motion To Certify Petitioner Class, filed by AAG Ronald F. Kehoe
10/29/2004	#24	Petitioners' Opposition To Defendants' Motion To Stay Proceedings Pending Study Commission Report And Action By The Legislature, filed by Joshua C. Krumholz with attached certificate of service.
10/29/2004	#25	Petitioners' Opposition To Defendants' Motion To Dismiss, filed by Joshua C. Krumholz with attached certificate of service.
10/29/2004	#26	Affidavit of Robert L. Spangenberg with attached Exhibits A-B.
11/01/2004	#27	Memorandum and Order..."I take no action on paper nos. 3, 6, 10, and 20 at this time. It is hereby ORDERED that paper no. 8, entitled, "Motion for Admission Pro Hac Vice," is ALLOWED. It is hereby ORDERED that paper no. 19, entitled, "Motion to Stay Proceedings Pending Study Commission Report and Action by the Legislature," is ALLOWED. Concerning paper no. 19, it has been made to appear that many aspects of the petition may be resolved by the investigation and report of the nine-member study commission created by the Legislature by emergency legislation.....it seems appropriate that the commission authorized by the Legislature be allowed to make its report. After the report is filed and studied by the parties, I will conduct a status conference to discuss the further progress of the lawsuit....." (Greaney, J.)
11/02/2004	#28	Notice to counsel, regarding paper number 27 filed.
11/08/2004	#29	Notice of Appearance filed for Commonwealth of Massachusetts by AAG David R. Kerrigan with attached certificate of service.
11/10/2004	#30	ASSENTED MOTION To Impound Portions Of Motion Papers, filed by AAG Ronald F. Kehoe with Affidavit of Service. (11/16/04 ASSENTED MOTION to Impound Portions of Motion Papers is ALLOWED WITHOUT HEARING. By the Court. (Greaney, J.))
11/10/2004	#31	Proposed Substitute pages 4-7 To Be Inserted In P # 21, filed by AAG Ronald F. Kehoe.
11/16/2004	#32	Notice to counsel, regarding paper number 30 filed.
01/25/2005		Notice of Court relocation to John Adams Courthouse sent.
04/22/2005	#33	Letter to Justice John M. Greaney from Joshua C. Krumholtz stating "At the Court's request, we write with regard to the recently completed Report by the Commission on the Legislature created to study the

provision of counsel to indigent persons in Massachusetts...we propose that the Court extend the stay that is in effect in this case for two additional months...In addition, the Court asked us to consider the impact of Hancock v. Commissioner of Education on the Arianna S. case. We do not understand that request to contemplate a full analysis of the Hancock decision, although we are prepared to do so if the Court would like. Generally, however, we believe that Hancock is substantively and procedurally different from this case...we respectfully request that the Court schedule a status conference for a date convenient for the Court after June 15, 2005..."

04/25/2005 #34

Copy of REPORT OF THE COMMISSION TO STUDY THE PROVISION OF COUNSEL TO INDIGENT PERSONS IN MASSACHUSETTS (Chapter 253 of the Acts of 2004) along with an Executive Summary) dated April 2005.

05/03/2005 #35

ORDER: "...It is ORDERED that the stay of proceedings is further extended to September 7, 2005." (Greaney, J.)

05/04/2005 #36

Notice to counsel, regarding paper number 35 filed.

07/19/2005 #37

MOTION To Dissolve Stay Of Proceedings And Request For Status Conference filed by Joshua C. Krumholz with attached Exhibits 1-2 and certificate of service. (7/29/05-MOTION To Dissolve Stay of Proceedings is DENIED without prejudice. (Greaney, J.))

07/21/2005 #38

Copy of faxed letter to Senate President Robert E. Travaglini, House Majority Leader John Rogers; Mark Neilsen, Office of the Governor's Legal Counsel and Speaker of the House Salvatore DiMasi from Atty Joshua Krumholz saying.. "Two days ago, we forwarded to you a motion that we filed with the Supreme Judicial Court seeking to lift the stay of the above-described proceeding. I write to inform you that, in response to that motion, the Court has set a hearing for July 26, 2005 at 2:00 p.m. in the Oliver Wendell Holmes courtroom at the Supreme Judicial Court. Although I cannot state with certainty what will be discussed at that hearing, my understanding is that the following topics will be addressed: Whether the matter will be ready for trial after Labor Day. Whether the parties will be able to the outstanding motions between them. Whether interim relief is necessary while the matter is pending, including the possibility of extending the order in Lavalee to all counties in the Commonwealth. Whether and to what extend the plaintiffs need to substitute parties. Although we do not anticipate that you will be able to speak or enter an appearance at the hearing, we write because you may find it beneficial to have a representative present during that hearing."

07/26/2005

Hearing held before Greaney, J.

07/26/2005 #39

Appearance of Atty Joshua C. Krumholz for Arianna S..

07/26/2005 #40

Appearance of Atty Edward J. Naughton for Arianna S..

07/26/2005 #41

Appearance of Atty Lawrence R. Kulig for Arianna S..

07/26/2005	#42	Appearance of AAG Ronald F. Kehoe for Commonwealth of Massachusetts filed.
07/26/2005	#43	Appearance of AAG David R. Kerrigan for Commonwealth of Massachusetts filed.
07/26/2005	#44	Appearance of Atty William J. Leahy for Committee for Public Counsel Services.
07/29/2005	#45	Notice to counsel, regarding paper number 37 filed.
05/26/2006	#46	NOTICE: Case called for dismissal per Standing Order of 2/8/72.
06/28/2006	#47	Letter requesting to remain on docket from Atty Joshua C. Krumholz.
07/03/2006	#48	ORDER allowing request to remain on docket. (Greaney, J.)
07/06/2006	#49	Notice to counsel, regarding paper number 48 filed.
07/07/2006	#50	Letter to Honorable John M. Greaney from AAG Ronald F. Kehoe saying.."In response to plaintiffs' counsel's letter to Your Honor dated June 27, 2006, the respondents believe that this petition should now be dismissed for both (1) lack of prosecution and (s) mootness....."
12/22/2006	#51	Letter to Honorable John M. Greaney from Atty Joshua Krumholz saying.."The petitioners, Arianna s., et al, submit this updated report in further response to the Court's notice, dated May 26, 2006, directing the petitioners to inform the Court in writing why this matter should not be dismissed. This report provides the Court with the most current information regarding the funding of legislative increases to the hourly rates paid to bar advocates, and supplements our prior report of June 27, 2006...."
06/21/2007	#52	Letter to The Honorable John M. Greaney from Atty Joshua Krumholz saying.."The petitioners, Arianna S., et al, submit this updated report in further response to the Court's notice, dated May 26, 2006, directing the petitioners to inform the Court in writing why this matter should not be dismissed. This report provides the Court with the most current information regarding the funding of legislative increases to the hourly rates paid to bar advocates, and supplements our prior report of December 22, 2006....."
08/10/2007	#53	Letter to The Honorable John M. Greaney (with attachment) from Atty Joshua Krumholz saying.."The petitioners, Arianna S., et al, submit this updated report in further response to the Court's notice, dated May 26, 2006, directing the petitioners to inform the Court in writing why this matter should not be dismissed. This report provides the Court with the most current information regarding the lack of funding during the past month of legislative increases to the hourly rates paid to bar advocates, and supplements our most recent report of June 15, 2007."
10/05/2007	#54	Letter to Honorable Justice Greaney from Joshua C. Krumholz with Attachments saying.."The petitioners...submit this updated report in further response to the Court's notice. dated Mav 26. 2006 directina the

petitioners to inform the Court in writing why this matter should not be dismissed. This report provides the Court with...current information regarding the potential crisis situation arising from the Legislature's failure to pass a supplemental budget last month of \$22.3 million to pay bar advocates for services performed during fiscal year 2007, and supplements our last report of August 10, 2007" filed.

10/18/2007 #55

Letter to Honorable John M. Greaney from Atty Joshua Krumholz saying.. "The petitioners, Arianna S., et al, submit this updated report to inform the Court that the Legislature has passed and the Governor has signed a supplemental budget, which includes \$22.3 million to pay bar advocated for services performed during fiscal year 2007....it is not necessary at this time to schedule a hearing. The petitioners do request that this case remain pending on the Court's docket."

10/30/2007 #56

Letter to Honorable John M. Greaney from AAG Ronald Kehoe saying.. "In response to petitioners' counsel's letter to the court dated October 18, 2007, the respondents believe that this petition should now be dismissed for both mootness and lack of prosecution, in addition to its failure to state a claim upon which relief may be granted....."

10/30/2007 #57

JUDGMENT: ..."the petition for relief pursuant to G.L. c. 211, s. 3, is hereby dismissed on the grounds of mootness, passage of time, and the recent legislative appropriation." (Greaney, J.)

10/30/2007 #58

Notice to counsel/parties: regarding paper number 57 filed.

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As of 07/30/2008 01:02