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United States District Court, District of Columbia.

Joy EVANS, et al., Plaintiffs,
UNITED STATES of America,
Plaintiff–Intervenor,
v.
Anthony A. WILLIAMS, et al., Defendants.

No. CIV. 76–293 SSH. | Aug. 20, 1999.

Attorneys and Law Firms

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Opinion

WRIT IN THE NATURE OF MANDAMUS[1]

1 Although Federal Rule of Civil Procedure 81(b) abolished the writ of mandamus in the district courts, "relief 'in the nature of mandamus' may still be obtained through an appropriate action or motion under the practice prescribed in the federal rules. The principles that governed the former writ now govern attempts to secure similar relief." *Sanchez–Espinoza v. Reagan,* 770 F.2d 202, 208, n.7 (D.C.Cir.1985) (internal citations omitted). *See also* 28 U.S.C. § 1361; *Haggard v. Tennessee,* 421 F.2d 1384, 1385 (6th Cir.1970); *Hammond v. Hull,* 131 F.2d 23, 25 (D.C.Cir.1942).

HARRIS, District J.

***1** On February 10, 1999, the Court issued an Order requiring the Special Master, in conjunction with the parties if possible, to develop a report suggesting ways to use the fines owed by defendants and recommending steps toward ending the Court's jurisdiction over this 23–year–old case. It was directed that the report be submitted in November 1999. The Court ordered in part that the report include an evaluation of existing programs which are intended to ensure adequate habilitation for the approximately 760 class members, who constitute the remaining persons who were institutionalized based upon mental retardation at the former Forest Haven facility. The report is necessary to the Court in developing a plan to conclude this case.

One area requiring examination is the system of providing individual court-appointed attorneys and advocates for the class members under D.C. Law 2–137. *See also* Superior Court Rules of Mental Retardation Procedure, R.11. The ability to suggest improvements, however, obviously requires knowledge of the status of the existing system. Currently, plaintiffs' class counsel do not know the identity of all the class members' individual court-appointed attorneys, or even if every class member has one. Such information is maintained in the files of the Family Division of the Superior Court of the District of Columbia ("Family Division").

This same information is also required by the Court Monitor in this case in order to monitor compliance with the Court's August 2, 1996, Remedial Plan. In pertinent part, the Court required defendants to inform the court-appointed attorneys of their clients' rights under the *Evans* consent orders and any applicable District of Columbia legislation, and to request them to report any deficiencies in the implementation of their clients' Individual Habilitation Plans (IHP) to the clients' case managers at the Mental Retardation and Developmental Disabilities Administration (MRDDA) and to the Court Monitor. *See* Remedial Plan at 11.

The Court Monitor first attempted to obtain this information in August 1998, and wrote multiple letters, which were unanswered, to Mr. Charles Gaines of the Superior Court's staff in the Family Division. The Court Monitor had several phone conversations with Mr. Gaines, during which, the Court has been informed, he cited various reasons why he could not provide the requested information, including an overworked staff. Finally, Mr. Gaines provided a list of attorneys' names. However, the Court Monitor brought to his attention the fact that the list was incomplete, and, upon attempting to contact the listed attorneys, the Court Monitor discovered that many of the attorneys were no longer serving as a court-appointed

attorney. The Court Monitor received no response from the Family Division. The Court Monitor then began a laborious process of trying to identify individual attorneys through their on-site visits and some letter-writing to attorneys whom they knew to be serving as court-appointed attorneys. This process, as would be expected, has not resulted in a complete list of attorneys' names .[2]

2 The process has revealed, however, that many of the court-appointed attorneys were not aware of their clients' rights under the *Evans* consent orders, and some were not even aware of the existence of this class action.

***2** Plaintiffs' class counsel then duly requested the necessary information from the Family Division. Independent of the Court's need for the information, plaintiffs' class counsel have an inherent interest in contacting the court-appointed attorneys and viewing the Superior Court files in order to represent their clients to best of their ability.[3] The Court Monitor accompanied plaintiffs' class counsel to a meeting with the Presiding Judge of the Family Division. However, the Presiding Judge apparently explained that the information is not available in a compiled format, nor are the files computerized; extracting the information would require examining the individual paper files. Plaintiffs' class counsel then offered volunteer law students to obtain the information from the files, but was turned down largely because of space and supposed confidentiality concerns.

3 The Court also notes that D.C.Code § 6–1972, which governs the rights of mentally retarded persons and access to their records, mandates that "the customer's ... counsel ... and any person properly authorized in writing by the customer, if such customer is capable of giving such authorization, shall be permitted access to the customer's records." The Court sees no valid reason why class counsel should not have ready access to these records; class counsel, after all, do represent each and every member of the class in all matters related to this class action

The Special Master then discussed the matter with the Presiding Judge, and on May 14, 1999, made a formal written request for the information. The Presiding Judge responded in a letter dated May 27, 1999, explaining that the Family Division would agree to provide the requested assistance, but taking the position that it would be more feasible to utilize existing court staff who are familiar with documents and internal procedures needed to verify the accuracy of the information. She calculated that the task would require 168 hours of overtime over a two-week period (four hours of overtime per day for five days per week and eight hours of overtime on two Saturdays for three employees) for a total cost of $2,675. She therefore stated that as soon as the expenditure of such funds was authorized, the Family Division would move forward with the task.

The Court, then apprised of the situation by the Special Master, initiated steps to resolve the situation informally on a personal basis with the Superior Court. The Court and the Presiding Judge agreed upon a meeting in the undersigned's chambers, which the Presiding Judge did not attend or call to reschedule. The Court again arranged to meet with the Presiding Judge, and, at a meeting in her chambers, the Court explained that it could not authorize $2,675 toward the Superior Court's provision of the information required, and took the position that the use of volunteer law students as paralegals seemed eminently feasible for all involved. She indicated that she would confer with the Chief Judge of the Superior Court and inform the undersigned of their decision within the next few days. The Court, however, never received a further response.

The Court thereafter called the Presiding Judge again, but was informed that she was on vacation. The Court therefore telephoned the Chief Judge of the Superior Court in its continuing effort to resolve the matter. The Chief Judge indicated that he was generally familiar with the problem, and said that he would discuss the matter with the Director of the Family Division concerning the logistics. He further stated that he would let this Court know the outcome within the next few days. Weeks have passed; to date, however, the Court has received no further contact from anyone in the Superior Court. Thus, despite repeated personal efforts, the Court, to its acute disappointment, has received no effective assistance from the Superior Court in its informal efforts to help achieve enforcement of its February 10, 1999, Order, and the August 2, 1996, Remedial Plan.

***3** Because of their inability to access their own clients' individual Superior Court records directly, plaintiffs' class counsel in conjunction with recently acquired *pro bono* co-counsel have attempted to obtain the information indirectly. On June 29, 1999, they sent out letters to a roster of over a hundred attorneys who serve as court-appointed attorneys. Counsel have received about

20 letters back from attorneys who have indicated the class member(s) they represent and their case file numbers. This process, however, is imperfect because a non-response regarding a particular class member does not necessarily mean that the individual does not have an attorney.[4] Only the Superior Court has conclusive information as to the class members' individual representation. Initially, plaintiffs' co-counsel were able to view their clients' records, but they later were refused access until they could produce a letter from each court-appointed attorney authorizing such access. When plaintiffs' co-counsel obtained such letters, they were told that the Family Division was reorganizing its files and that they could access only four files each day.

4 For example, a problem could occur with the mailing or an error in the address. Notably, between 20 and 30 letters have already been returned as undeliverable.

Given this rather remarkable history, the Court sees no feasible alternative remedy at this stage but to issue a writ in the nature of mandamus pursuant to the All Writs Act, 28 U.S.C. § 1651(a). Under the All Writs Act, "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The Supreme Court "has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained ." *United States v. New York Telephone Co.,* 434 U.S. 159, 172 (1977) (upholding federal court order issued pursuant to All Writs Act compelling non-party phone company to cooperate with an order to install pen registers on phones to investigate crimes).

"The All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling. Although that Act empowers federal courts to fashion extraordinary remedies when the need arises, it does not authorize them to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate." *Pennsylvania Bureau of Corrections v. United States Marshals Service,* 474 U.S. 34, 43 (1985). The Court finds that no other effective means exists to address specifically the continuing unwillingness of the Superior Court to provide access to the information required by this Court.

The Court readily concludes that it has the power to issue a writ directed to the Family Division of the Superior Court. "[F]ederal court power under Section 1651 extends to all persons who 'are in a position to frustrate the implementation of a court order or the proper administration of justice, ... and encompasses even those who have not taken any affirmative action to hinder justice." *In re Grand Jury Proceedings,* 654 F.2d 268, 277 (3d Cir.1981) (quoting *New York Telephone Co,* 434 U.S. at 174). The Superior Court obviously is in a position to frustrate the implementation of the Court's February 10, 1999, Order, because it alone possesses the information needed for determining the status of the system of appointing individual attorneys for the class members. Its unwillingness to provide a complete list of the court-appointed attorneys to the Court Monitor also frustrates the Court's enforcement of its August 2, 1996, Remedial Plan.

***4** It is also clear that the writ is necessary to "aid the court in the exercise of its jurisdiction." *In re Grand Jury Proceedings,* 654 F.2d at 276. *See also Jones v. Lilly,* 37 F.3d 964, 967 (3d Cir.1994) ("the writ issued must actually aid the court in the performance of its duties"). In *Grand Jury Proceedings,* a federal district court issued an order under the All Writs Act to a state court judge, when the state court judge refused to meet with the U.S. Attorney and determine the relevancy of certain grand jury materials; without this information, the federal court could not determine which grand jury materials could be disclosed to the criminal defendant in his federal case. 654 F.2d at 277–278. Similarly here, without the information that the Superior Court possesses, the Court cannot devise a complete plan for concluding this case, because the Special Master and the parties would be unable to evaluate and report upon the conditions of the system of appointing individual attorneys for the class members. The Court Monitor is also unable to assess the defendants' degree of compliance with the August 2, 1996, Remedial Plan.

The Court finds that issuing this order is reasonable. "The power of federal courts to impose duties upon third parties is not without limits; unreasonable burdens may not be imposed." *New York Telephone,* 434 U.S. at 171. As plaintiffs' class counsel has offered to do all of the work through the use of volunteers who would not require any payment, the Family Division primarily would be required only to arrange access to the files so that class

counsel may obtain the necessary information regarding the court-appointed attorneys. Any confidentiality concerns can be addressed by requiring the volunteer paralegals to sign a confidentiality agreement. Plaintiffs' class counsel and legal assistants are expected to work cooperatively with the Family Division. The imposition on the Family Division should be minimal.

Finally, this writ does not implicate concerns about interference with another court's proceedings. First, the usual federalism concerns that exist between a federal and a state court are not present here. The District of Columbia courts are not state courts, but rather are federal courts created pursuant to Article I of the U .S. Constitution. D.C.Code Ann. § 11–101(2) (1995); *Palmore v. United States,* 411 U.S. 389 (1973). *See In re Grand Jury Proceedings,* 654 F.2d at 277–78 (upholding writ despite comity concerns between federal and state courts); *Russillo v. Scarborough,* 935 F.2d 1167, 1172 n.4 (10th Cir.1991). Second, this writ is not used as a form of supervisory control of an inferior court's decision, unlike the more common usage of a mandamus writ; the Court is not directing the outcome of another court's judgment on an issue or resolution of a case. It is merely requiring that another court provide information that is indispensable to this Court's administration of a case and that should be readily made accessible to the individuals' own attorneys anyway. *Cf. Stern v. South Chester Tube Co.,* 390 U.S. 606 (1968) (a federal district court has power to issue an order in the nature of mandamus to compel private corporation to allow shareholder to inspect corporate records). The fact that the Family Division is restricting class counsel's access to their clients' own files is analytically wholly illogical.

***5** The Court had hoped not to reach the point of issuing a writ pursuant to the All Writs Act. However, given all of the circumstances, the Court sees no other way to end the frustration of the implementation of its February 10, 1999, Order. Accordingly, it hereby is

ORDERED, that H. Edward Ricks, the Director of the Family Division of the Superior Court of the District of Columbia, forthwith shall initiate providing plaintiffs' class counsel and co-counsel access to the files maintained in the Family Division regarding *Evans* class members who are committed pursuant to D.C. Law § 2–137.[5] (Of course, it is expected that such access shall be provided in a manner which will not be disruptive of the normal day-to-day functioning of the Family Division; counsel and their legal assistants are expected to work cooperatively with Mr. Ricks.) It hereby further is

5 For the Family Division's convenience, the Court attaches hereto a list of class members, current as of April 19, 1999. The list also indicates the last known court-appointed attorney for selected class members. The Court notes that class member Patrick Dutch should be removed from the list, as he died on July 9, 1999, of heatstroke after being left in a van.

ORDERED, that any information obtained from these records shall be held confidential pursuant to the Court's August 5, 1999, Protective Order.[6] It hereby further is

6 Plaintiffs' court-appointed attorneys have independent access to these records under D.C.Code § 6–1972.

ORDERED, that service of this writ shall be made promptly by the United States Marshals Service upon Mr. Ricks, with copies thereof to be served by mail upon the parties to this case and upon the Honorable Eugene N. Hamilton, Chief Judge of the Superior Court, and the Honorable Zinora Mitchell–Rankin, Presiding Judge of the Family Division.

SO ORDERED.