

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CENTER FOR COMMUNITY ACCESS
and MICHIGAN PARALYZED VETERANS
OF AMERICA,

Plaintiff,

Case No. 05-73475

v.

Hon. Gerald E. Rosen

CITY OF DETROIT,

Defendant.

_____ /

ORDER APPOINTING SPECIAL MASTER

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on September 30, 2008

PRESENT: Honorable Gerald E. Rosen
United States District Judge

Through a stipulated order entered on August 31, 2006 (the "Settlement Order"), the parties to this suit agreed upon a partial settlement of Plaintiffs' claims, under which the Defendant City of Detroit is obligated, *inter alia*, to ensure that its street and sidewalk resurfacing and alteration projects are carried out consistently with the pertinent federal laws and regulations governing use of and access to public facilities by individuals with disabilities, and to conduct a survey and formulate a proposed plan for bringing into compliance all curb ramps within a designated portion of downtown Detroit. Since the entry of the Settlement Order, Defendant has made some progress toward fulfilling these

obligations, but has often failed to meet promised deadlines, and at least some of the work performed or overseen by Defendant during this period has failed to meet the court-ordered and agreed-upon standard of full compliance with federal law.

On a number of occasions — most recently, at a status conference held on September 10, 2008 — the Court has discussed with counsel and City of Detroit representatives the possibility of appointing a special master who can closely and carefully monitor Defendant's compliance with the Settlement Order and assist in the development and implementation of appropriate plans and schedules for corrective action. In the course of these discussions, the parties have identified certain individuals and firms as qualified to serve in this role, and the Court also has looked into this matter.

In light of the numerous and significant problems and delays to date in Defendant's compliance with the Settlement Order, the Court has determined that the timely implementation of the terms of this order cannot realistically be achieved through this Court's own limited resources, and that more vigorous supervision and oversight, as well as specialized knowledge, is necessary to meet this objective. Accordingly, and as a last resort, the Court finds that it is now necessary and appropriate to appoint as a special master one of the individuals proposed and agreed upon by the parties: specifically, Robert Scott of H.R. Gray. The Court having addressed this matter with counsel at a September 10, 2008 status conference,¹ as well as on other occasions, and being

¹At this status conference, the Court and counsel were informed that H.R. Gray and Mr. Scott have performed work on behalf of the City of Detroit as a subcontractor on a project that

otherwise fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that Robert Scott of H.R. Gray is appointed as Special Master pursuant to Fed. R. Civ. P. 53. In this role, Mr. Scott will:

- (i) review any reports, plans, surveys, and other materials that the parties file with the Court in accordance with the Settlement Order;
- (ii) develop with the parties specific plans and detailed schedules for achieving prompt and timely compliance with the terms, requirements, and objectives of the Settlement Order;
- (iii) meet and confer with the parties, whether together or separately, as deemed necessary and appropriate to facilitate Defendant's performance of its obligations under the Settlement Order, and to otherwise assist in the implementation of the terms of this order;
- (iv) be available to address and resolve any concerns or disputes that may arise between the parties with regard to the matters encompassed by the Settlement Order;
- (v) make recommendations to the Court as to the appropriate resolution of any disputes or concerns that have been raised but remain unresolved and require the Court's intervention;
- (vi) perform any site visits, inspections, or other forms of monitoring deemed necessary and appropriate to ensure and facilitate compliance with the terms of the Settlement Order and the provisions of any plans or

bears some relationship to the subject matter of this suit. Accordingly, the Court requested, and Mr. Scott has provided, a letter disclosing the nature and extent of this work. In this letter, Mr. Scott states that the majority of H.R. Gray's subcontracting work on this project has been completed, and he expresses H.R. Gray's willingness to cease any further involvement with this project "if this becomes a disqualification issue."

Having reviewed this letter and discussed this matter with counsel at the September 10 status conference, the Court is satisfied that no conflict presently exists and that, if one were to develop, it could readily be alleviated. Nonetheless, out of an abundance of caution, the Court has forwarded a copy of Mr. Scott's letter to counsel, and any objections arising from this disclosure should be raised in accordance with the procedure noted below.

schedules developed pursuant to this order; and

(vii) provide reports to the Court — initially on a quarterly basis, but less frequently if deemed appropriate in light of subsequent developments — regarding the progress toward implementing the terms of the Settlement Order and any issues, problems, or concerns about which the Court should be aware.

In carrying out these tasks, the Special Master shall be provided with any and all materials he requests from the parties and shall be granted full access to all work sites, subject to the parties' opportunity to lodge prompt and specific objections with the Court. If additional authority is needed to carry out the above tasks, the Special Master may return to the Court to seek such authority. The Court expects the parties to fully cooperate with the Special Master, and sanctions will be imposed if this cooperation is not forthcoming.

IT IS FURTHER ORDERED that the Special Master shall submit quarterly invoices to the Court for services rendered pursuant to the present order of appointment. Any objections to the amounts requested by the Special Master shall be filed with the Court within *ten (10) days* after receipt of an invoice, and these objections will be addressed by the Court or referred to a Magistrate Judge for resolution. Defendant shall pay the invoiced amounts, as modified by the Court in connection with any objections,

within **60 (sixty) days** of its receipt of an invoice or the Court's resolution of any objections, whichever is later.

SO ORDERED.²

s/Gerald E. Rosen
United States District Judge

Dated: September 30, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 30, 2008, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager

²As noted, the Court and counsel addressed the appointment of a special master at a September 10, 2008 status conference, and no objections were raised to the Court's decision to appoint a special master. Moreover, the Court has selected as a special master an individual who was proposed and agreed upon by the parties. Nonetheless, pursuant to Fed. R. Civ. P. 53(b)(1), the parties shall, within **seven (7) days** of the date of this order, file and serve any objections they might have to the appointment of Robert Scott as Special Master or any other terms of this order.