

1999 WL 33117446

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United States District Court, D. Connecticut.

Leo McCOY

v.

Michael BELMONT

No. 3:85 CV 465(JGM). | Aug. 9, 1999.

#### Attorneys and Law Firms

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James P. Welsh, Laurie A. Deane, Attorney General's Office, Hartford, for Michael Belmont, Supt., Southbury Training School, I/O, Jean Gino, M.D., Med. Director, Southbury Training School, I/O, Brian Lensink, Comm. Ct Dept of Mental Retardation, Ofelia Tee King, Md, Philadelpo Guevarra, MD, Paul Bruch, defendants.

#### Opinion

### RULING ON PLAINTIFF'S REQUEST FOR DISCOVERY FROM SPECIAL MASTER

MARGOLIS, Magistrate J.

\*1 Although familiarity with the complex legal and procedural history of this protracted litigation is presumed, a brief summary of facts relevant to this motion follows. Absent objection from either party, on June 22, 1998, this Magistrate Judge issued an Order of Reference appointing Professor Edward Skarnulis as a Special Master for twelve (12) months to report periodically on the status of the implementation of the Consent Decree which was entered into by the parties on March 10, 1992. (Dkt.# 217). On May 18, 1999, Professor Skarnulis filed his report and recommendations. (Dkt.# 262). The Court extended Professor Skarnulis' appointment to September 27, 1999 or to such other date as established by the Court. (See Dkts.269 & 278).

On July 7, 1999, new counsel filed an appearance for plaintiff and the prior attorney of record filed a motion for withdrawal, which the Court granted. (Dkts.272 & 273). By letter, plaintiff has expressed his dissatisfaction with

numerous conclusions and recommendations proposed by Professor Skarnulis. (Letter to Court dated July 26, 1999). A lengthy settlement/status conference was held before this Magistrate Judge on July 28, 1999, at which time plaintiff's new counsel orally requested the opportunity to seek discovery from the Special Master, including taking his deposition, to which defense counsel objected; counsel were ordered to file briefs on this issue by August 6, 1999. (Dkt.277-78). The deadline by which the parties may file formal objections to the Special Master's report has been extended to September 3, 1999. (See Dkts. 263, 271 & 278). Pursuant to Federal Rule of Civil Procedure 53(e)(2), the Court also scheduled an evidentiary hearing on whether it should adopt Professor Skarnulis' recommendations, commencing on September 27, 1999. (See Dkt. # 278).

On August 6, 1999, counsel filed their briefs on this issue. (Dkts.279 & 280). Plaintiff concedes that there is no case law permitting him to conduct discovery from the Special Master. (Dkt. # 279 at 3). However, plaintiff "fails to see how he can attack the validity of the master's report without information about how the report [was] produced." (*Id.*). In opposition, defendant maintains that deposition or other discovery of the Special Master should not be permitted and that the documents and records upon which the Special Master relied are already in the custody, possession and control of the plaintiff. (Dkt. # 280 at 7). Defendant contends that if the Court does permit discovery, it should be limited to documents not already in plaintiff's possession; documents likely to lead to evidence relevant to the factual bases of the Special Master's recommendations; and must not compromise the confidential communications to which the Special Master was entitled through the Order of Reference. (*Id.* at 8). For the reasons stated below, the Court will not permit plaintiff to depose the Special Master or serve discovery requests on him. Therefore, plaintiff's request is *denied*.

#### I. DISCUSSION

\*2 It is well settled that a judge is not subject to examination of the process by which he or she reaches his or her conclusions. *United States v. Morgan*, 313 U.S. 409, 422 (1941); *Feller v. Board of Education*, 583 F.Supp. 1526, 1528 (D.Conn.1984). "Although judicial officials do not enjoy immunity from subpoena and can be subjected to discovery requests, it is clear that such officials while performing their decision-making processes are not generally subject to discovery." *Beam v. Department of the Air Force*, 169 F.R.D. 309, 310 (D.Md.1996) (citation omitted). "In many instances, the party seeking the discovery has access to the sought after information through alternative sources. In other

**McCoy v. Belmont, Not Reported in F.Supp.2d (1999)**

instances, the information is cumulative, unnecessary, or does not lead to the discovery of admissible evidence.” *Id.* “Should a judge be vulnerable to subpoena as to the basis of every action taken by him [or her], the judiciary would be open to frivolous attacks upon its dignity and integrity, and interruption of its ordinary and proper functioning.” *United States v. Dowdy*, 440 F.Supp. 894, 896 (W.D.Va.1977) (citations and internal quotations marks omitted). Thus, “courts have refused to issue subpoenas for oral testimony of the decision-makers as to the basis for their opinions absent extreme and extraordinary circumstances.” *Id.* (numerous citations omitted). Mere allegations of bias “will not justify intrusion into the mental processes of a hearing officer.” *McGoldrick v. Koch*, 110 F.R.D. 153, 156 (S.D.N.Y.1986) (citations omitted). “[A] party must present a more specific evidentiary basis.” *Id.*

Applying these principles, as Special Master, Professor Skarnulis serves in a judicial capacity and it is inappropriate to subject him to an examination of his mental processes. See *Gary W. v. State of Louisiana*,

*Department of Health and Human Resources*, 861 F.2d 1366, 1369 (5th Cir.1988). Plaintiff has failed to provide the required evidentiary basis constituting “extreme and extraordinary circumstances.” The dignity and integrity of the Special Master shall not be impugned because of a recent change in plaintiff’s counsel. New counsel may consult with prior counsel, who worked closely with Professor Skarnulis from the time of his appointment until her withdrawal from the case. Additional information is available from state records, employees and the plaintiffs themselves.

**II. CONCLUSION**

In conclusion, for the reasons stated above, plaintiff’s request (Dkt.# 279) is *denied*.