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Amended Order of Reference

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

DAVID RUIZ, et al.,)	
<i>Plaintiffs,</i>)	Civ. A. No. H-78-987
UNITED STATES OF AMERICA,)	
<i>Plaintiff-Intervenors,</i>)	Order
v.)	
W.J. ESTELLE, JR., et al.,)	July 24, 1981.
<i>Defendants.</i>)	

In a Memorandum Opinion filed on December 12, 1980, the Court announced its intention to appoint one or more Special Masters in this cause. Subsequently, the Court received nominations from all parties and reviewed at length the qualifications of those persons whose names were submitted for consideration. For the reasons set forth in its earlier opinion, the Court hereby appoints Vincent M. Nathan to serve as Special Master for the Court in this cause.

Mr. Nathan was nominated both by the plaintiffs and by the United States of America. A native Texan, he graduated from the University of Oklahoma College of Law in 1959. He was a member of the faculty of the College of Law of the University of Toledo for 16 years, during the last 10 of which he served as a Professor of Law. He is now engaged in the practice of law in Toledo, Ohio.

Mr. Nathan was appointed in December of 1975 by the United States District Court for the Northern District of Ohio to serve as Special Master in *Taylor v. Perini*, litigation involving the Marion Correctional Institution in Marion, Ohio. In January of 1977, Mr. Nathan was appointed by the same court to serve as Special Master in *Jones v. Wittenburg* (440 F. Supp. 60), litigation involving the Lucas County Jail in Toledo, Ohio. In June of 1979 Mr. Nathan was appointed by the United States District Court for the Southern District of Georgia to serve as Special Monitor in *Guthrie v. Evans*, litigation involving the Georgia State Prison in Reidsville, Georgia. He continues to serve that court as special monitor at this time.

Mr. Nathan is the author of *The Use of Masters in Institutional Reform Litigation*, 10 Tol. L. Rev. 419 (1979), which was republished and distributed by the Federal Judicial Center. He has served and continues to serve as a consultant for the National Institute of Corrections and is an acknowledged expert in the field of implementation of judicial decrees in a correctional setting. In view of his extensive experience and impressive credentials, Mr. Nathan is fully qualified to assume the enormous responsibilities of monitoring compliance with the Court's order in this cause. Because the scope of application of the Court's remedial orders in this case will be infinitely broader than that encountered in any other example of correctional litigation, it is essential that the Special Master be a person with extensive experience and an established record of success.

In addition, the Court will appoint several monitors to assist the Special Master. These monitors will be persons of high professional qualification who are nominated by the Special Master. The Special Master shall supervise the activities of such monitors in accordance with the guidelines announced in *Newman v. Alabama*, 559 F.2d 283, 290 (5th Cir.1977).

The Court grounds its appointment of a Special Master in this case upon two independent sources of authority. First, it relies upon its inherent power to make such an appointment. Courts have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their duties. . . . This power includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause. From the commencement of our Government, it has been exercised by the federal courts, when sitting in equity, by appointing, either with or without the consent of the parties, special masters, auditors, examiners and commissioners. *Ex parte Peterson*, 253 U.S. 300 (1920). The enforcement of its remedial order is a judicial duty. . . .

Second, the Court relies upon Rule 53 of the Federal Rules of Civil Procedure in making this reference. In its Memorandum Opinion of December 12, 1980, referred to above, the Court has demonstrated that the appointment of a Master is both necessary and appropriate in accordance with the provisions of Rule 53. The formal fact finding role contemplated by the Rule will be particularly relevant to the Special Master in this case to the extent that he may hold hearings and make factual findings as a result of those hearings for review by the Court.

Pursuant to these bases of authority, the Special Master shall assist the Court by monitoring compliance with the Court's orders in this cause. All actions of the Special Master and any monitors or members of the Special Master's staff will be under the direct control and supervision of the Court. In particular, the Special Master and other persons operating on the Court's behalf shall not intervene in the administrative management of the Texas

Department of Corrections or any of its institutions. In addition, the Special Master, his staff and any monitors who are appointed shall not be empowered to direct the defendants or any of their subordinates to take or to refrain from taking any specific action to achieve compliance. The sole power to direct compliance and to punish noncompliance remains with this Court. The duties of the Special Master, then, will be to observe, monitor, find facts, report or testify as to his findings, and make recommendations to the Court concerning steps which should be taken to achieve compliance. The Special Master may and should assist the defendants in every possible way, and to this end he may and should confer informally with the defendants and their subordinates on matters affecting compliance. In order to accomplish these objectives, the Special Master shall have the following powers:

1. The Special Master shall have unlimited access to any facilities, buildings, or premises under the jurisdiction or control of the Texas Department of Corrections, and no advance notice of any visit or inspection shall be required.

2. The Special Master shall have unlimited access to the records, files and papers maintained by the Texas Department of Corrections to the extent that such access is related to the performance of the Special Master's duties of monitoring compliance. Such access shall include all Departmental, institutional, and inmate records, including but not limited to medical records. The Special Master may obtain copies of all such relevant records, files and papers.

3. The Special Master may conduct confidential interviews with all staff members and employees of the Texas Department of Corrections. In addition, he may engage in informal conferences with such staff members and employees, and such persons shall cooperate with the Special Master and respond to all inquiries and requests related to compliance with the Court's orders in this case. The Special Master may require compilation and communication of oral or written information relevant to such compliance.

4. The Special Master may conduct confidential interviews and meetings at the institution to which they are confined with any prisoner or group of prisoners under the jurisdiction of the Texas Department of Corrections.

5. The Special Master may attend any formal institutional meetings or proceedings at any institution under the jurisdiction of the Texas Department of Corrections.

6. The Special Master may require written reports from any staff member or employee of the Texas Department of Corrections with respect to compliance with this Court's orders.

7. The Special Master shall have the full power to order and conduct hearings with respect to the defendants' compliance with this Court's orders. To this end he shall have the power to require the attendance of witnesses, including both prisoners and employees of the Texas Department of Corrections, and he shall exercise all other powers described in subsection (c) of Rule 53 of the Federal Rules of Civil Procedure.

8. The Special Master may select and employ necessary administrative, clerical, and support staff. All such persons as well as the nature of their compensation shall be approved by the Court in advance of their employment. In addition, with advance permission of the Court, the Special Master may hire independent specialists and experts to assist him in fulfilling the responsibilities assigned to him by this Order.

9. In exercising the powers enumerated in paragraphs 1 through 6 above, the Special Master may act by himself, or through monitors appointed by the Court. All actions of such monitors, however, shall be supervised and coordinated by the Special Master in order to accomplish the objectives of this Reference.

The Special Master shall, as he deems necessary or as required by the Court, file reports with the Court in which he shall make findings concerning the defendants' compliance with the provisions of the Court's Orders and the need, if any, for supplemental remedial action. In general, the Special Master's reports to the Court will be based upon reports prepared by individual monitors appointed by the Court as follows:

1. Reports of their factual observations shall be prepared by the monitors appointed by the Court and shall be submitted to the parties and to the Special Master. Any objections to such a report shall be the subject of a hearing before the Special Master upon request of any party. After the parties have had an opportunity to respond or object to a monitor's report, with or without a hearing, the Special Master shall file his report with the Court, including his findings of fact based upon the monitor's report, the record of any hearing, or both.

2. No objection may be filed to the Special Master's report which could have been filed to the monitor's report preceding it. Otherwise, any party may file written objections to the Special Master's report within fifteen days of the filing thereof with the Court. The objecting party shall note each particular finding or recommendation to which objection is made, shall provide proposed alternative findings, and may request a hearing or oral argument before the Court.

3. Any request for a hearing before the Court must include a list of witnesses and documents to be presented to the Court. A copy of the objections, proposed findings, and any request for a rehearing shall be served on all parties.

4. The Special Master's findings of fact shall be accepted by the Court unless shown to be clearly erroneous. Any evidence not previously presented to the Special Master in the course of the formal hearing preceding his report will be admitted at a hearing before the Court only upon a showing that the party offering it lacked a reasonable opportunity to present the evidence to the Special Master.

In addition, the Special Master may submit reports based upon hearings held by him in the absence of preliminary reports by monitors, and in such instances the Special Master's reports and findings shall be treated in accordance with the provisions of Rule 53 of the Federal Rules of Civil Procedure. The Special Master may also submit reports based upon his own observations and investigations in the absence of a formal hearing before him. In any event, however, the Special Master's findings must be based upon evidence which is made part of the record before the Court.

The Special Master shall be compensated at the rate of Ninety-Five Dollars (\$95.00) per hour for services performed in accordance with this Order. Appropriate compensation for members of the Special Master's staff as well as that of monitors shall be established by the Court upon the recommendation of the Special Master and after notice to all parties. All reasonable expenses incurred by the Special Master in the course of the performance of his duties, including but not limited to the rental of office space and

equipment in Texas, salaries of staff, long distance telephone, photocopying, printing, travel, data processing, and postage, shall be reimbursed.

The cost of the mastership shall be borne by the defendants as costs in this action. The Special Master shall submit to the Court periodic statements of his time and expenses for review and approval by the Court.

The defendants are hereby ordered to deposit the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) with the Clerk of this Court as interim payment of costs, and payments to the Special Master and to monitors shall be made by order of the Court out of such funds. As payments are made by the Clerk, the defendants shall deposit additional sums with the Clerk as the Court may order and direct.

The Special Master may cause copies of this Order of Reference or portions thereof to be posted in any facility under the jurisdiction of the Texas Department of Corrections and may cause such copies to be distributed to inmates within such facilities and to employees of the Texas Department of Corrections.
