

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

V.

CIVIL ACTION NO.: 3:16-CV-00622-CWR-FKB

THE STATE OF MISSISSIPPI

DEFENDANT

**THE STATE OF MISSISSIPPI'S MEMORANDUM
REGARDING SPECIAL MASTER CANDIDATES
AND THE ROLE OF THE SPECIAL MASTER**

Introduction

On September 3, 2019, the Court issued its Memorandum Opinion and Order. (ECF 234). The Court found this “case is well suited for a special master who can help the parties craft an appropriate remedy – one that encourages the State’s forward progress in a way that expedites and prioritizes community-based care.” (ECF 234 at 60). The Court ordered the parties to submit “three names of potential special masters and a proposal for the special master’s role.” (ECF 234 at 60). As ordered, this Memorandum discusses the State of Mississippi’s three special master candidates and Mississippi’s proposal for the special master’s role.

I. Potential Special Masters.

As ordered by the Court, Mississippi proposes the three special master candidates discussed below in alphabetical order.¹

A. Joel Dvoskin, Ph.D.

Dr. Joel Dvoskin’s CV is attached as Exhibit 1. Dr. Dvoskin is a clinical and forensic psychologist, licensed in Arizona and New Mexico and certified in Forensic Psychology by the American Board of Professional Psychology. He served as Chair of the Governor’s Advisory Council on Behavior Health and Wellness for the State of Nevada. He is the former Acting

¹ Mississippi requests a hearing on the special master candidates before the Court selects a special master.

Commissioner of Mental Health for the State of New York, after serving for more than a decade as Associate Commissioner and Director for Forensic Services for the New York State Office of Mental Health.

Dr. Dvoskin is a Fellow of the American Psychological Association (APA), and Past President of two APA Divisions, including the American Psychology-Law Society and Psychologists in Public Service. He served on the APA Policy Task Force on Reducing Gun Violence, and on the APA Blue Ribbon Commission on Ethical Processes.

He previously served on the adjunct faculty of the University of Arizona Law School, and currently teaches at the University of Arizona Medical School, in addition to his consulting practice in forensic psychology in Tucson, Arizona.

Dr. Dvoskin has been an invited speaker to the Conference of Chief Justices, the National Association of Attorneys General, the National Tactical Officers Association, CIT (Police Crisis Intervention Teams) International, numerous universities, and hundreds of other professional organizations. He has twice been honored as the Distinguished Visiting Fellow at the University of California – Davis College of Medicine.

Dr. Dvoskin provides training and public speaking services, mediation, expert testimony on civil and criminal matters, and consulting services to state mental health, criminal and juvenile justice, public safety agencies, courts, police departments, corporations, and universities.

In 1995, Dr. Dvoskin served on the White House Task Force on the Future of the African American Male. He has served as a monitor or independent expert overseeing settlement agreements over correctional and mental health facilities and systems in Washington, New Mexico, Michigan, Oregon, and Colorado and frequently serves as an expert for the Civil Rights Division of the United States Department of Justice, various government agencies, the American Civil Liberties Union, and various state Protection and Advocacy Systems.

Dr. Dvoskin has served as design consultant for numerous hospital, prison, and jail architectural projects, including St. Elizabeths Hospital in Washington, DC and the Fulton (Missouri) State Hospital. He is currently architectural design consultant for a new forensic building at the Hawaii State Hospital.

On particular significance here, Dr. Dvoskin has been retained by the McArthur Justice Center and the ACLU to make recommendations for improving Mississippi's forensic mental health care system. Through that retention, Dr. Dvoskin has a working familiarity with Mississippi's mental health care system generally.

B. Tracy Plouck.

Tracy Plouck's CV is attached as Exhibit 2. Ms. Plouck has extensive state-level budgeting and policy experience. She served 7.5 years as Ohio's Director of Mental Health and Addiction Services and 3 years as Ohio's Medicaid Director (appointed by both Republican and Democratic Governors). Ms. Plouck also served 8 years in the Ohio Office of Budget and Management. While leading Ohio's mental health system, Ms. Plouck served as President of the National Association of State Mental Health Program Directors for 2.5 years. She also served as Vice Chair of the Council of State Governments' Justice Center, where she worked to support the national Stepping Up initiative to reduce the number of people with mental illnesses in jails.

For many years, Ms. Plouck has worked closely with NAMI² Ohio to increase funding for treatment, housing, and other supports. This advocacy resulted in Medicaid expansion in Ohio, which connected 700,000 childless adult Ohioans with mental health and addiction services and supports. *Ms. Plouck is the only candidate proposed by the parties who has been the director of a state mental health authority and a Medicaid agency.*

² NAMI is the National Alliance on Mental Illness.

Ms. Plouck is an Executive in Residence at the Ohio University College of Health Sciences and Professions. In that capacity, Ms. Plouck provides leadership for research and outreach activities focused on substance abuse and mental health issues, facilitates regional and statewide connections to promote and extend research dealing with these issues, and contributes content knowledge for the development of courses and continuing education workshops in the areas of opioid use, substance abuse disorder, and related issues.

C. Steve Roark, MSW, LCSW.

Steve Roark is the Chief Executive Officer of the Behavioral Health Foundation of Central Mississippi, which provides administrative and clinical facilities for the care and prevention of mental illness and chemical dependency, and administers programs and furnishes services to individuals with mental illness. Mr. Roark was the Executive Director of Warren-Yazoo Mental Health Service from 1986 to 2013. He also maintains a private practice in counseling. His 37 years of experience includes founding and leading two non-profit organizations.

II. Role Of The Special Master.

As ordered by the Court, Mississippi submits its proposal regarding the role of the special master as set forth below. The role of the special master should be limited to helping the parties craft an appropriate remedy. The special master should have no investigatory duties or authority to conduct evidentiary hearings or to hire staff. Nor should the special master be permitted to propose a remedial plan to the Court or to provide any comments or opinions regarding any remedial plan that may be proposed by the parties. The special master did not hear the evidence admitted at trial or make determinations regarding the credibility of witnesses. The remedy ordered in this case should be based on only the evidence admitted at trial and subject to the trial

evidentiary cutoff date of December 31, 2018. Discovery is closed and should not be reopened. The special master's compensation should be split 50/50 among the parties.³

The special master process should proceed as follows:

- Participation in the process is a non-waiver of any issues or arguments on appeal, if any.
- Negotiations and proposals must be subject to Fed. R. Evid. 408 and Local Rule 83.7, to specifically include the confidentiality provisions of Local Rule 83.7(j), and the parties must be prohibited from using the negotiations and proposals on appeal, if any.
- The special master should be prohibited from having ex parte contacts with the Court or the parties.
- As a starting point for negotiations, the parties should each submit a proposed remedy to the special master and each other, and negotiations should proceed from there.
- If the parties are unable to agree on a remedy, then the parties should each submit a final proposed remedy to the Court,⁴ and the Court should make a ruling regarding the remedy and enter a final judgment.

Dated: October 3, 2019.

Respectfully submitted,

PHELPS DUNBAR LLP

BY: /s/ James W. Shelson
Reuben V. Anderson, MB 1587
W. Thomas Siler, MB 6791
James W. Shelson, MB 9693
Nash E. Gilmore, MB 105554
4270 I-55 North
Jackson, Mississippi 39211-6391
Post Office Box 16114
Jackson, Mississippi 39236-6114
Telephone: 601-352-2300

³ Because the Court has not made a ruling regarding the role of the special master or the remedy, or entered a final judgment, Mississippi reserves all objections and issues regarding the role of the special master and the Memorandum Opinion and Order. (ECF 234).

⁴ If the parties are unable to agree on a remedy, Mississippi should be permitted to reassert its fundamental alteration defense *after* the Court makes a ruling on the remedy.

Telecopier: 601-360-9777
Email: reuben.anderson@phelps.com
tommy.siler@phelps.com
jim.shelson@phelps.com
nash.gilmore@phelps.com

Harold Pizzetta, III, MB 99867
Assistant Attorney General
General Civil Division
Walter Sillers Building
550 High Street
Jackson, MS 39201
Telephone: 601-359-3816
Telecopier: 601-359-2003
Email: HPIZZ@ago.state.ms.us

Mary Jo Woods, MB 10468
Special Assistant Attorney General
Mississippi Attorney General's Office
Walter Sillers Building
550 High Street
Jackson, MS 39201
Telephone: 601-359-3020
Telecopier: 601-359-2003
Email: MWOOD@ago.state.ms.us

Attorneys for the State of Mississippi

CERTIFICATE OF SERVICE

I certify that on October 3, 2019, I electronically filed this document with the Clerk of the Court using the ECF system, which sent notification of such filing to all ECF counsel of record in this action.

/s/ James W. Shelton
JAMES W. SHELTON