

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re Flint Water Cases.

Judith E. Levy
United States District Judge

_____ /

This Order Relates To:

ALL CASES

_____ /

AMENDED ORDER APPOINTING SPECIAL MASTER¹

On June 19, 2018, the Court, pursuant to Fed. R. Civ. P. 53(b)(1), gave the parties to all Flint Water litigation notice of its intent to appoint Deborah E. Greenspan as a Special Master in this case. (Dkt. 506 at 2-3.) Parties' objections or alternative suggestions were due on July 2, 2018. (*Id.* at 3.) Having reviewed the parties' submissions, the Court hereby appoints Ms. Greenspan as Special Master with authority over the areas set forth below.

The Special Master's contact information is:

Deborah E. Greenspan
(202) 420-3100
dgreenspan@blankrome.com

¹ Paragraphs 11 and 18 have been amended. Those amendments are underlined.

I. Scope

1. Order Applicable to All Flint Water Cases Pending Before the Court. This order applies to all Flint Water cases currently pending before the Court, and to all related actions that have been or will be originally filed in, transferred to, or removed and assigned to this Court. This order is binding on all parties and their counsel in all cases currently pending or subsequently made part of these proceedings and will govern each case in the proceedings.

2. Appointment of Special Master. Pursuant to Federal Rule of Civil Procedure 53, the Court hereby appoints Deborah E. Greenspan as a Special Master to assist the Court in this litigation.

II. Basis for Appointment

3. Basis for Appointment. The Special Master is hereby appointed pursuant to Rule 53(a)(1)(C) to address pretrial matters that cannot be addressed effectively and timely by an available district judge or magistrate judge of the district.

4. No Grounds for Disqualification. Pursuant to Rule 53(a)(2) and 53(b)(3), the Special Master has submitted the attached declaration to the Court that states that she has no relationship to the parties, counsel,

action, or Court that would require disqualification of a judge under 28 U.S.C. § 455. During the course of these proceedings, the Special Master and the parties will notify the Court immediately if they become aware of any potential grounds that would require disqualification.

5. Fairness Considerations. Pursuant to Rule 53(a)(3), the Court has considered the fairness of imposing the likely expenses of the Special Master on the parties. The Court believes that the appointment and use of the Special Master will materially advance the litigation, thereby achieving considerable cost-saving to all parties. The Court will protect against unreasonable expenses and delay through regular communication with the Special Master and counsel.

6. Proper Notice Given to All Parties. Pursuant to Rule 53(b)(1) and the Court's June 19, 2018 order, the Court gave all parties to these proceedings notice of its intent to appoint the Special Master and an opportunity to be heard with respect to such an appointment before issuing this order. The Court has reviewed the filings and determined that no objection has been presented that would prevent the appointment of a Special Master in this case.

III. Special Master's Duties, Authority, and Compensation

7. Diligence. Pursuant to Rule 53(b)(2), the Court directs the Special Master to proceed with all reasonable diligence in performing her duties in these proceedings.

8. Scope of the Special Master's Duties. Pursuant to Rule 53(b)(2)(A), the Special Master will assist the Court with administration of time and expense and common benefit submissions, management of any census order the Court may enter, coordination of state and federal litigation, discovery matters as designated by the Court, and other pretrial matters as determined by the Court. The Special Master will have the authority to set the date, time and place for all hearings, to preside over hearings, to take evidence, to conduct telephonic conferences to resolve disputes arising during depositions, and to issue orders awarding non-contempt sanctions, including, without limitation, the award of attorneys' fees, as provided by Rules 37 and 45. The Special Master is authorized to receive and consider information designated as confidential pursuant to any protective order entered in this matter, and may review privileged material *in camera*. The Special Master has agreed to be bound by any protective orders entered in this case.

(a) The Special Master is authorized to retain independent auditors, accountants, and clerical assistants or other necessary personnel to assist her with the preparation of any report concerning expenses or fees; and

(b) In connection with her review of the time and expense and common benefit submissions, the Special Master is authorized to employ such processes, and to request such evidence and information, in whatever form is appropriate, as will contribute to a fair and efficient resolution of such issues.

9. Scope of the Special Master's Authority. The Special Master will have the authority provided in Rule 53(c).

10. Procedure for Motions Submitted to the Special Master. The procedural requirements contained in this Court's Pretrial Orders will govern any motion practice before the Special Master, unless she orders otherwise.

11. Ex Parte Communications. Pursuant to Rule 53(b)(2)(B), the Special Master may communicate *ex parte* with the Court at any time. Generally, the Special Master will not communicate *ex parte* with any party without first providing notice to, and receiving consent from that

party's counsel. However, in order to facilitate the fair and effective performance of her duties as outlined herein and as assigned by the Court, including all duties regarding time and expense and common benefit submissions, the Special Master may communicate *ex parte* with counsel.

12. Preservation of Materials and Preparation of Record. Pursuant to Rule 53(b)(2)(c), the Special Master will maintain files consisting of all documents submitted to her by the parties and of any of her written orders, findings, and/or recommendations. Pursuant to Rule 53(e), the Special Master will file any written orders, findings, and/or recommendations with the Court via the Court's Electronic Case Filing ("ECF") system in Case No. 16-cv-10444. Such filing will fulfill the Special Master's duty to serve her orders on the parties.

13. Compensation. Pursuant to Rule 53(f), the Special Master will be compensated at an hourly rate of \$600 for her services as Special Master in these cases, and will be reimbursed for any out-of-pocket expenses (e.g., costs of accountants, auditors, and clerical or other necessary personnel). The Special Master may be reimbursed for travel expenses, but will not charge for travel time. The Special Master will

prepare a monthly invoice for her services, which she will provide to interim co-lead class counsel, individual liaison counsel, and all defense counsel.

Interim co-lead class counsel and individual liaison counsel will pay one-half of all hourly rates, expenses, and costs, and defense counsel will pay one-half of all hourly rates, expenses, and costs incurred by the Special Master to be divided among the defendants in a manner agreed upon by them. Any disputes regarding compensation, costs and expenses, or the allocation of payment of such fees and costs among the parties, will be brought to the Court's attention.

14. Special Master's Reports to Court. Pursuant to Rule 53(e), the Special Master will issue orders on motions presented to her which will be final and not require the Court's signature, subject to the parties' right to file objections as described below. Further, the Special Master will prepare reports and issue recommendations to the Court on the subjects covered by this appointment. If the Special Master considers it advisable to make any other report to the Court, she will do so in accordance with Rule 53(f).

IV. Action on Special Master's Orders, Reports, or Recommendations

15. Scope of Section. Pursuant to Rule 53(f), the procedures described in paragraphs 16 through 19 herein will govern any action on the Special Master's orders, reports, and/or recommendations.

16. Time Limits for Review. Any party wishing to file objections to or a motion to adopt or modify the Special Master's orders, reports, and/or recommendations must file such objections or motion with the Court within 14 days from the day the Special Master filed the order, report, and/or recommendation via ECF. Any order issued by the Special Master will remain in effect pending any such objection or motion. Any opposition will be filed within 7 days after the objection on the motion is filed.

17. Filing the Record for Review. The party filing the objection or motion will submit with such objection or motion any record necessary for the Court to review the Special Master's order, report, and/or recommendation, including any transcripts of proceedings before the Special Master and any documents submitted by the parties in connection with the Special Master's order, report, and/or

recommendation. Failure to provide the record will constitute grounds for the Court to overrule the objection or deny the motion.

18. Standard for the Court's Review. Pursuant to Rule 53(f)(3)-(5), the Court will review findings of fact made or recommended by the Special Master *de novo*. The Court will review *de novo* any conclusions of law made or recommended by the Special Master. The Court will set aside the Special Master's ruling on a procedural matter only for an abuse of discretion.

19. Court's Actions on Special Master's Orders. Pursuant to Rule 53(f)(1), in acting on an order, report, or recommendation of the Special Master, the Court will afford the parties an opportunity to present their positions and, in its discretion, may receive evidence, and may adopt or affirm; modify; wholly or partly reject or reverse; resubmit to the Special Master with instructions; or make any further orders it deems appropriate.

IT IS SO ORDERED.

Dated: July 31, 2018
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on July 31, 2018.

s/Shawna Burns
SHAWNA BURNS
Case Manager