

FILED  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

APR 14 1986

PARIS DIVISION

MURRAY L. HARRIS, CLERK  
BY DEPUTY *James R. Patrick*

LUCILLE YOUNG, ET AL., §

V. § CIVIL ACTION NO. P-80-8-CA

SAMUEL PIERCE, JR., Secretary §  
of the Department of Housing §  
and Urban Development, ET AL. §

ORDER

A hearing on the appointment of Francis E. McGovern as special master in the above-styled action, as outlined in the attached order of reference, shall be set for Monday, May 5, 1986, at 10:00 a.m. in the United States District Court, Tyler, Texas, in the courtroom assigned to the undersigned judge.

It is so ORDERED.

SIGNED and ENTERED this 14<sup>th</sup> day of April, 1986.

*Chas. Wayne Justice*  
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
PARIS DIVISION

LUCILLE YOUNG, ET AL.,                    §  
V.   § CIVIL ACTION NO. P-80-8-CA  
SAMUEL PIERCE, JR., Secretary       §  
of the Department of Housing       §  
and Urban Development, ET AL.       §

O R D E R

An order granting the plaintiffs' motion for summary judgment on the issue of liability in this civil action was issued on July 31, 1985. That order held that the Department of Housing and Urban Development and its officials ("HUD") knowingly created, promoted, and funded racially segregated housing in thirty-six counties in East Texas in violation of the Fifth Amendment of the United States Constitution and federal statutes. The order did not address the question of relief. On December 17, 1985, HUD filed a proposed remedial plan, in response to the plaintiffs' motion for injunctive relief. In its plan, HUD outlined proposed remedies for public housing authorities and privately owned, insured-assisted housing projects in the thirty-six counties included in the class action. Because the remedial phase of this action presents exceptional conditions, Francis E. McGovern, Esquire, shall be appointed to serve as special master, to monitor the proposed desegregation of federally funded housing programs in East Texas and to supervise the discovery on the remedial phase of this litigation.

I.

A federal court has the inherent power to appoint a special master to aid in the performance of specific judicial duties. Ex Parte Peterson, 253 U.S. 300, 312 (1920). In addition, Rule 53 of the Federal Rules of Civil Procedure provides for the appointment and compensation of masters in extraordinary circumstances. "A reference to a master shall be the exception and not the rule. ... [I]n actions to be tried without a jury, ... a reference shall be made only upon a showing that some exceptional condition requires it." Fed.R.Civ.P. 53(b).

The advisory committee note explains that an outside master may be appropriate under Rule 53, when special expertise is desired or lengthy and detailed supervision of a case is required. See id. advisory committee note. In this action, both circumstances exist. First, the person designated as special master has served in the same capacity in other complex litigation and has experience monitoring remedial efforts and supervising discovery. See Jenkins v. Raymark Industries, Inc., No. M-84-193-CA (E.D. Tex. December 17, 1985) (order appointing special master to prepare a report that compares the characteristics of claims of class representatives and class members in asbestos litigation); Wilhoite v. Olin, CV83-C-5021-NE (N.D. Ala. August 10, 1983) (order appointing special master in action seeking damages for and removal of DDT and other contaminants from the vicinity of Redstone Arsenal); In re Ohio Asbestos Litigation, OAL Order No. 3, (N.D. Ohio July 14, 1983) (order appointing master to propose a plan for the

management of pretrial discovery and trial proceedings); United States v. Michigan, M26-73CA (W.D. Mich. 1983) (appointing special master in action involving Indian treaty). The use of masters may improve the judicial process, when they contribute skills and experience that judges lack. Reed v. Cleveland Board of Education, 607 F.2d 737, 747 (6th Cir. 1979).

Second, this action will necessitate detailed and perhaps lengthy supervision. Not only does it involve residents of thirty-six counties with different demographic characteristics and housing needs, but it also encompasses, by the defendants' count, 177 autonomous projects operated by for-profit companies, non-profit organizations, and local government authorities. The variations in the housing programs, housing providers, and localities suggest that no single remedy will work. Instead, a remedy will need to be tailored to each public housing authority or housing project based on its peculiar facts. Although it is hoped that there will not be endless supervision in this action, it has taken more than five years to resolve the issue of liability. And the defendants propose quarterly reports for at least two years, to monitor the efforts of local authorities and ensure that public housing is available on a nondiscriminatory basis. Under these circumstances, both the equitable powers of the court and Rule 53 provide authority for the appointment of a special master in this action.

Other courts have appointed special masters in cases involving facts or problems similar to this action. For example, special masters have been appointed in school desegregation

cases, to assist in the development of a remedy after a finding of liability. See, e.g., Amos v. Board of Directors, 408 F. Supp. 765, 822-24 (E.D. Wis.), aff'd sub nom. Armstrong v. Brennan, 539 F.2d 625 (7th Cir. 1976), vacated on other grounds, 433 U.S. 672 (1972); see also Gautreaux v. Chicago Housing Authority, 384 F. Supp. 37, 37-38 (N.D. Ill. 1974) (referring housing desegregation case to magistrate to develop methods for achieving compliance with orders on construction of public housing in City of Chicago), aff'd sub nom. Chicago Housing Authority v. Austin, 511 F.2d 82 (7th Cir. 1975). Indeed, Rule 53 is primarily concerned with the appointment of masters, as either a factfinder prior to a court's remedial decree or as an expert to recommend remedial relief after a finding of liability. Ruiz v. Estelle, 679 F.2d 1115, 1160 n.234 (5th Cir.), modified on other grounds, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983) (quoting Nathan, The Use of Masters in Institutional Reform Litigation, 10 Tol. L. Rev. 419, 428 (1979)).

Moreover, the defendants' proposed remedial plan is merely a continuation of the efforts that HUD began prior to the finding of liability in the court's order of July 31, 1985. Although a useful beginning, the voluntary efforts of HUD appear to be inadequate to eliminate the segregation that exists. By appointing a master to monitor the implementation of HUD's remedial plan, poor persons in East Texas will have a better opportunity to obtain racially desegregated housing.

## II.

The special master shall have three primary responsibilities in this action:

1. to monitor the remedial efforts of HUD, as outlined in its proposed remedial plan and other documents filed with the court;

2. to study the operation of the local public housing authorities, rent supplement programs, and section eight housing programs in the thirty-six class action counties, in order to determine additional ways that racial desegregation might be accomplished in HUD-assisted housing; and

3. to report to the court on the results of HUD's remedial efforts and recommend further action that might be taken as part of an appropriate remedial decree, including a definition of substantial compliance.

To assist the special master in carrying out his responsibilities, he shall have all of the rights and powers provided under Rule 53. Specifically, he shall have complete and unrestricted access to the records of HUD, including statistical data, contracts, reports, correspondence, plans, advertisements, notices, compliance reviews, and other documents. In addition, he shall have plenary authority to interview employees and staff members of HUD, local housing authorities, and other providers of federally funded housing at reasonable times and places, and unlimited access at reasonable times to projects or residences that are funded by HUD in the thirty-six county area. He also shall have the right to hire assistants as he deems necessary,

subject to the approval of the court, and his right to access shall extend to any other individual whom he designates.

Finally, he may confer with the parties or their attorneys in ex parte communications, as required to fulfill his duties.

The master shall file periodic reports every two months with the court with copies to the parties. The reports shall describe the monitoring activities in which he has engaged, the results of the monitoring, and any other matters that he deems appropriate for the remedial phase of this litigation. A final report shall be due by February \_\_, 1987, ten months from the date of entry of this order of reference. After the filing of the final report, each party shall have thirty days in which to object to it or any of its provisions and to request a hearing. The hearings on any objections shall include the right to present evidence and to cross-examine adverse witnesses. The court retains the authority to reject or modify any recommendation by the master, regardless of whether any party has filed an objection.

### III.

The costs and expenses of the special master shall be borne by HUD. The special master shall be compensated for his services at the rate of \$100.00 per hour, and will be reimbursed for the necessary expenses he may incur during the performance of his duties. HUD is directed to deposit \$25,000.00 in the registry of the court, for reimbursement of the master's expenses. The master should submit periodically a voucher of his expenses as the basis for entry of orders directing payment to him. Accordingly, it is

ORDERED that Francis E. McGovern, Esquire, shall be, and he is hereby, **APPOINTED** special master in this action, to monitor and supervise discovery on desegregation of HUD-assisted housing in East Texas. It is further

ORDERED that HUD shall, within thirty days of service of this order, deposit the sum of \$25,000.00 with the clerk of the court, as interim payment for the special master's services and expenses.

SIGNED and ENTERED this \_\_\_\_ day of \_\_\_\_\_, 1986.

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CHIEF JUDGE