

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re Flint Water Cases

No. 5:16-cv-10444-JEL-MKM

HON. JUDITH E. LEVY

MAG. MONA K. MAJZOUB

**PLAINTIFFS' MOTION TO TAKE JUDICIAL NOTICE OF THE
STATE COURT'S APPOINTMENT OF NEXT FRIENDS ON
BEHALF OF EACH MINOR AND LEGALLY INCAPACITATED
OR INCOMPETENT INDIVIDUAL FOR PURPOSES OF
PARTICIPATING IN THE FLINT WATER SETTLEMENT, AND
FOR ENTRY OF SAME PARALLEL ORDER IN THIS COURT**

Plaintiffs move this Court under Federal Rule of Evidence 201 for an order taking judicial notice of Genesee County Circuit Court's appointment of Next Friends on behalf of each Minor and Legally Incapacitated or Incompetent Individual ("LII") for purposes of participating in the Flint Water Settlement, and ordering the same parallel relief in this Court. In support of this motion, Plaintiffs state:

1. Federal courts may take judicial notice of proceedings in state courts. *Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir. 1980) (citations omitted).

2. Plaintiffs have asked the Genesee County Circuit Court, the Honorable Joseph J. Farah, in Case No. 17-108646-NO, to order that any

one of the following can be appointed as Next Friend for any related Minor or LII, for the sole purposes of registering and pursuing a claim and recovery under the Amended Settlement Agreement: parent (natural or adoptive), grandparent, legal guardian, existing court-appointed representative, adult sibling (full, half, or step), or adult aunt or uncle.

3. Plaintiffs have also asked that certain requirements apply to an appointed Next Friend.

4. First, that any individual applying to represent the interest of a Minor or LII as Next Friend, must provide written notice to all other individuals who fall into the Next Friend categories listed in paragraph 2.

5. Second, that only one Next Friend can act for any one Minor or LII. For example, one parent can be appointed as Next Friend for a minor child or children, but both parents cannot be appointed as Next Friend for the same child or children. In this manner, the circuit court and Claims Administrator need only look to one person as Next Friend for any particular Minor or LII.

6. Third, that there is no conflict if the Next Friend is also a Claimant under the Amended Settlement Agreement because separate

Qualified Settlement Fund allocations exist for the Minors and Adults. In addition, this Court's and the circuit court's oversight and approval of the entire Amended Settlement Agreement, including the methods of payment of Monetary Awards to Minors and LIIs, provide added protection against conflicts.

7. Fourth, that in order to act as a Next Friend an individual must identify themselves on the Registration Form as a Next Friend for a Minor or LII and provide proofs with, or prior to submitting, the Claim Form to the Claims Administrator that they are a: parent (natural or adoptive), grandparent, legal guardian, existing court-appointed representative, adult sibling (full, half, or step), or adult aunt or uncle, of the Minor or LII. Within forty-five (45) days of receipt of a Claim Form identifying a Next Friend for a Minor or LII, the Claims Administrator will send an Adverse Notice to any Next Friend that has failed to submit proofs necessary to demonstrate that they meet the requirements to act as a Next Friend for a Minor or LII. The Claims Administrator shall consult with the Special Master before issuing any such Adverse Notice.

8. Fifth, that an individual who has satisfied the aforementioned requirements and submitted the appropriate proofs be deemed appointed as a Next Friend.

9. Sixth, that once a Next Friend has been appointed they be authorized to execute, on behalf of a Minor or LII, trust agreements, structured settlement agreements, and any other agreements or documents necessary to accomplish full and final resolution of the matter on behalf of the Claimant, as well as how the Monetary Awards should be received and managed on their behalf through providers who have been approved as part of the Settlement Program.

10. Seventh, that the circuit court order that, as Next Friend, an individual can register and pursue claims and a recovery for a Minor or LII under the Amended Settlement Agreement.

11. Eighth, that a Next Friend may seek reconsideration or an appeal of any Adverse Notice issued by the Claims Administrator pursuant to a process to be set forth in the Amended Settlement Agreement.

12. Finally, that in the event of a dispute between two or more individuals seeking to act as Next Friend, the Master GAL may take

action to secure consensual resolution among the potential Next Friends. If consensual resolution is not obtained, the Master GAL shall refer the matter to the Special Master along with a report of his or her findings and recommendation, who will take action as authorized by the Court. The Special Master's determination shall be final, binding, and non-appealable by any means.

13. If and when the aforementioned motion is granted, Plaintiffs ask that this Court take judicial notice of the Genesee County Circuit Court's appointment of Next Friends, and enter the same order identifying the types of persons that can act as Next Friends on behalf of each Minor and LII.

14. The Settling Parties under the Amended Settlement Agreement have agreed that this motion be filed in this Court, pursuant to paragraph 21.6 of that agreement, and agree to the relief requested.

CONCLUSION AND RELIEF REQUESTED

For the reasons stated above, Plaintiffs request that the submitted motion and proposed order be granted.

Dated: January 7, 2021

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was filed with the U.S. District Court through the ECF filing system and that all parties to the above case were served via the ECF filing system on January 7, 2021.

Dated: January 7, 2021

/s/ Jessica B. Weiner

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re Flint Water Cases

No. 5:16-cv-10444-JEL-MKM

HON. JUDITH E. LEVY

MAG. MONA K. MAJZOUB

**[PROPOSED] ORDER TAKING JUDICIAL NOTICE OF THE
APPOINTMENT OF NEXT FRIENDS AND ORDERING
PARALLEL RELIEF WITH THE GENESEE COUNTY CIRCUIT
COURT**

Plaintiffs filed a motion to take judicial notice of the state court's appointment of Next Friends and to order the same parallel relief in this Court (ECF No. __). On ____, the Genesee County Circuit Court, the Honorable Joseph J. Farah, in Case No. 17-108646-NO, entered an order appointing any one of the following as Next Friend for any related Minor or LII, for the sole purposes of registering and pursuing a claim and recovery under the Amended Settlement Agreement: parent (natural or adoptive), grandparent, legal guardian, existing court-appointed representative, adult sibling (full, half, or step), or adult aunt or uncle. The circuit court also ordered the following requirements related to a Next Friend:

1. First, that any individual applying to represent the interest of a Minor or LII as Next Friend, must provide written notice to all other individuals who fall into the Next Friend categories listed in paragraph 2.

2. Second, that only one Next Friend can act for any one Minor or LII. For example, one parent can be appointed as Next Friend for a minor child or children, but both parents cannot be appointed as Next Friend for the same child or children. In this manner, the circuit court and Claims Administrator need only look to one person as Next Friend for any particular Minor or LII.

3. Third, that there is no conflict if the Next Friend is also a Claimant under the Amended Settlement Agreement because separate Qualified Settlement Fund allocations exist for the Minors and Adults. In addition, this Court's and the circuit court's oversight and approval of the entire Amended Settlement Agreement, including the methods of payment of Monetary Awards to Minors and LIIs, provide added protection against conflicts.

4. Fourth, that in order to act as a Next Friend an individual must identify themselves on the Registration Form as a Next Friend for

a Minor or LII and provide proofs with, or prior to submitting, the Claim Form to the Claims Administrator that they are a: parent (natural or adoptive), grandparent, legal guardian, existing court-appointed representative, adult sibling (full, half, or step), or adult aunt or uncle, of the Minor or LII. Within forty-five (45) days of receipt of a Claim Form identifying a Next Friend for a Minor or LII, the Claims Administrator will send an Adverse Notice to any Next Friend that has failed to submit proofs necessary to demonstrate that they meet the requirements to act as a Next Friend for a Minor or LII. The Claims Administrator shall consult with the Special Master before issuing any such Adverse Notice.

5. Fifth, that an individual who has satisfied the aforementioned requirements and submitted the appropriate proofs be deemed appointed as a Next Friend.

6. Sixth, that once a Next Friend has been appointed they be authorized to execute, on behalf of a Minor or LII, trust agreements, structured settlement agreements, and any other agreements or documents necessary to accomplish full and final resolution of the matter on behalf of the Claimant, as well as how the Monetary Awards should

be received and managed on their behalf through providers who have been approved as part of the Settlement Program.

7. Seventh, that the circuit court order that, as Next Friend, an individual can register and pursue claims and a recovery for a Minor or LII under the Amended Settlement Agreement.

8. Eighth, that a Next Friend may seek reconsideration or an appeal of any Adverse Notice issued by the Claims Administrator pursuant to a process to be set forth in the Amended Settlement Agreement.

9. Finally, that in the event of a dispute between two or more individuals seeking to act as Next Friend, the Master GAL may take action to secure consensual resolution among the potential Next Friends. If consensual resolution is not obtained, the Master GAL shall refer the matter to the Special Master along with a report of his or her findings and recommendation, who will take action as authorized by the Court. The Special Master's determination shall be final, binding, and non-appealable by any means.

Under Federal Rule of Evidence 201, this Court hereby takes judicial notice of these appointments subject to these requirements, and

by entry of this Order adopts the same requirements for cases in this Court.

IT IS SO ORDERED.

Judith E. Levy,
United States District Court Judge
Dated: _____