

CASE NO. 14-CI-02523

CIRCUIT CLERK'S OFFICE  
JEFFERSON CIRCUIT COURT

JEFFERSON CIRCUIT COURT  
DIVISION 3  
JUDGE MITCH PERRY

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CLERK 5  
KOSAIR CHARITIES COMMITTEE, INC.                      D.C.

PLAINTIFF

v.

NORTON HEALTHCARE, INC.,  
NORTON HOSPITALS, INC., and  
NKC, INC.

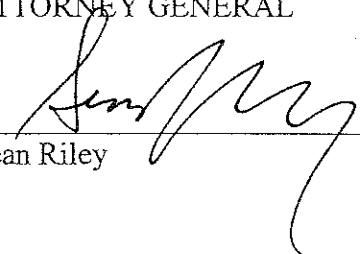
DEFENDANTS

**COMMONWEALTH OF KENTUCKY'S MOTION TO INTERVENE**

The Commonwealth of Kentucky ex rel. Jack Conway in his official capacity as Attorney General (the "Commonwealth"), by and through counsel, hereby moves the Court pursuant to CR 24 for intervention in the present action. In support of its Motion, the Commonwealth attaches a Memorandum of Law and a pleading pursuant to CR 24.03 setting forth the claims for which intervention is sought. Additionally, the Commonwealth tenders as an exhibit to this filing a Joint Motion to Appoint a Special Master Commissioner and requests that, should intervention be granted, this Court cause the Clerk to file said motion contemporaneous with the grant of intervention. Upon grant of intervention and the filing of the Motion to Appoint a Special Master Commissioner, the movants will properly notice said motion for this Court's regular civil motion hour.

Respectfully submitted,

JACK CONWAY  
ATTORNEY GENERAL

  
\_\_\_\_\_  
Sean Riley

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*Counsel for the Commonwealth*

## NOTICE

The foregoing motion to intervene will be heard at the regular civil motion hour for the Jefferson Circuit Court, Division 3, at the Courthouse in Louisville, Kentucky, on Monday, August 4<sup>th</sup>, 2014, at 9:45 AM, or as soon thereafter as counsel may be heard.

## CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and accurate copy of the foregoing was this 30th day of July, 2014, served by mailing a copy via first-class mail to:

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\_\_\_\_\_  
Sean Riley

## **MEMORANDUM OF LAW**

The Attorney General, as the state's chief law officer, represents the interests of the Commonwealth in supervising and protecting the Commonwealth's charitable assets. The role of the Attorney General in this area is threefold: to prevent the conversion of charitable gifts by non-charitable entities, to prevent the application of gifts to improper purposes or beneficiaries, and to prevent the waste of assets. Where, as here, the Commonwealth has information and belief that these wrongs have occurred and continue to occur, the Attorney General has both the authority and the duty to protect the Commonwealth's interest in these assets that have been dedicated to charitable purposes. A failure to do so would result in the erosion of the trust that the generous citizens of the Commonwealth have in Kentucky's robust network of nonprofits, not-for-profits and charities.

The Commonwealth seeks intervention in this action pursuant to his constitutional, statutory, and common law authority in order to protect its interest in the charitable assets at issue. Intervention by the Commonwealth by and through the Attorney General in this matter will ensure that the interests of the citizens of the Commonwealth in the Commonwealth's charitable assets will be adequately protected. Accordingly, the Commonwealth seeks an Order granting the Commonwealth intervention in this action as a matter of right. If the Court does not find that the Commonwealth may intervene as a matter of right, the Commonwealth respectfully requests permission of the Court to intervene.

## **PROCEDURAL POSTURE**

By virtue of a number of agreements executed between the existing parties, Kosair Charities Committee, Inc. ("Kosair") has provided to the Norton entities over \$100 million to develop and operate a pediatric hospital in Louisville called Kosair Children's Hospital. The

most recent of the agreements provides these charitable assets are to be “expended by Norton Healthcare at [Kosair Children’s Hospital].” In its original and First Amended Complaints, Kosair makes numerous allegations regarding Norton’s use of these funds as well as the use of the Kosair name.<sup>1</sup> Kosair argues, *inter alia*, that the funds are held constructively in trust by Norton and that the trust has been violated. Currently, the existing parties are engaging in motion practice. No discovery between the parties has commenced and the Court has not issued a scheduling order.

## ARGUMENT

Pursuant to constitutional, statutory, and common law, the Commonwealth has a right to intervene in this action, and the Court should so order. In the alternate, however, adequate grounds exist for the Court to exercise its discretion to permit the Commonwealth to intervene. Absent an order granting the Commonwealth intervention as a matter of right, the Commonwealth respectfully respects the leave of the Court to intervene in this proceeding.

### I. INTERVENTION AS A MATTER OF RIGHT

#### A. The Legal Standard

“Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless that interest is adequately represented by existing parties.” CR 24.01(1). Courts construe this rule liberally in order to

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<sup>1</sup> Kosair’s claims, as they are styled in the First Amended Complaint, are for: Declaratory Action/Accounting, Breach of Contract, Breach of Trust, Breach of Fiduciary Duty, Unjust Enrichment, Constructive Trust, Resulting Trust, Accounting, Reformation, Infringement of trademark and service mark.

effect the purpose of intervention. Yocom v. Hi-Flame Coals, Inc., 568 S.W.2d 757, 759 (Ky. Ct. App 1978).

B. The Commonwealth's Motion is Timely

Timeliness of a motion to intervene as a matter of right is a question of fact. Hazel Enterprises, LLC v. Cmty. Fin. Servs. Bank, 382 S.W.3d 65, 68 (Ky. Ct. App. 2012), reh'g denied (Oct. 8, 2012). "A court may consider the following factors to determine whether a motion to intervene was timely: (1) [T]he point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure, after he or she knew or reasonably should have known of his or her interest in the case, to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention." Id. (citing Carter v. Smith, 170 S.W.3d 402, 408).

A weighing of these factors demonstrates beyond dispute that the Commonwealth's motion is timely. First, this action is still nascent and has not progressed far. Kosair filed its Complaint on May 8, 2014 and its First Amended Complaint on June 9, 2014. Discovery between the parties has not commenced, and Norton has not yet filed an Answer (a Motion to Dismiss filed by Norton is currently pending). Additionally, the Court has not issued a scheduling order. Second, the Commonwealth's purposes for seeking intervention, to assert and protect its interest in charitable assets, weigh in its favor. As the chief law officer of the Commonwealth, the Attorney General is uniquely positioned to exercise the Commonwealth's supervisory powers over charities and charitable trusts as *parens patriae*, and the Attorney General is the officer that can adequately do so. Third, the Commonwealth has diligently

pursued this matter since becoming aware of its interest in the case. The Commonwealth learned of the dispute between Kosair and Norton with the filing of the original complaint in May, 2014, promptly investigated Kosair's claims, and spared no time in filing this motion.

Fourth, intervention by the Commonwealth will not prejudice the original parties because the Commonwealth has applied promptly for intervention after it became aware of its interest in the case. As already discussed, this action is nascent. Norton will have every opportunity to respond to the Commonwealth's allegations and avail itself of all the process it is due. Finally, unusual circumstances militate in favor of intervention. As discussed above, the Commonwealth by and through the Attorney General, as the steward for the Commonwealth's charitable assets, is the only entity in a position to protect the sovereign interest in assets that have been dedicated to charitable purposes.

Accordingly, the Commonwealth's Motion to Intervene is timely and the Court should grant intervention.

C. The Commonwealth Has a Unique Interest in the Subject Property

To intervene as a matter of right, a party's interest relating to the transaction must be a present substantial interest in the subject matter of the lawsuit, rather than an expectancy or contingent interest. Baker v. Webb, 127 S.W.3d 622 (Ky. 2004). The Commonwealth, by virtue of the doctrine of *parens patriae*, has a present and substantial interest in the funds that are the subject matter of this proceeding and should be granted intervention so that it may protect that interest.

As provided for in Section 91 of the Constitution of Kentucky, "[t]he duties of [the Attorney General] shall be such as may be prescribed by law." KRS 15.020 provides that the Attorney General is "the chief law officer of the Commonwealth of Kentucky" and "*shall*

exercise all common law duties and authority pertaining of the office of the Attorney General under the common law, except when modified by statutory enactment.” KRS 15.020 (emphasis added). The opinion of Kentucky’s highest court in *Commonwealth ex rel. Ferguson v. Gardner*, elegantly and succinctly describes the nature of the Commonwealth’s common law interest in charities and charitable assets:

The asserted right of the Attorney General to intervene in such proceeding is predicated on the ancient English doctrine that the King, as *parens patriae*, superintended the administration of charities and acted by the attorney general, who was his proper officer in that respect.

Commonwealth ex rel. Ferguson v. Gardner, 327 S.W.2d 947 (Ky. 1959). Furthermore, “[p]ublic charities are public blessings, and the commonwealth is interested in giving force and effect to them.” Commonwealth v. Young Men’s Christian Ass’n, 76 S.W. 522, 523 (Ky. 1903) (quoting Chambers v. Baptist Educ. Soc’y, 40 Ky. 215, 220 (Ky. 1841)). Whereas at English common law “the King, as *parens patriae*, had the general superintendence of all charities . . . so here, the Commonwealth being substituted for the King, as *parens patriae*, should exercise the like superintendence and control.” Chambers, 40 Ky. at 219.

The Commonwealth clearly has the duty and authority to supervise the use of the *res* at issue in this case, which consists of funds that have been raised by Kosair, a charitable organization, and transferred to Norton in the name of a charitable purpose, promoting the health and well-being of the Commonwealth’s children. Thus, the Commonwealth has a unique interest in the subject property and should be granted intervention.

D. The Commonwealth’s Interest Is Not Adequately Represented by the Existing Parties

Neither Norton nor Kosair can adequately represent the Commonwealth’s interest in this case. Whereas Kosair’s interest arose as a result of the transfer of the *res* to Norton, the



Commonwealth's interest is more expansive. As the superintendent of the Commonwealth's charitable assets, the Commonwealth by and through the Attorney General has a broader interest than that of any of the existing parties. It has supervisory authority over Kosair in Kosair's capacity as a charity organized under the laws of the Commonwealth. Due to Kosair's funding agreements with Norton, the Commonwealth also derivatively has this supervisory authority over Norton's use of the funds. Only the sovereign can exercise its *parens patriae* power over these entities in protecting the Commonwealth's charitable assets.

The Commonwealth's application is timely, and it has an interest in the subject property of this suit that only it can adequately represent. As an additional matter, the Commonwealth submits that a separate proceeding in this Court in which the Commonwealth may assert its interest will only overburden the Court's docket and the existing parties. Accordingly, the Court should enter an order granting the Commonwealth intervention as a matter of right.

## II. PERMISSIVE INTERVENTION

In the alternate, adequate grounds exist pursuant to CR 24.02 to permit the Commonwealth to intervene. Absent an order granting the Commonwealth intervention as a matter of right, the Commonwealth respectfully requests leave of this Court to intervene.

### A. The Legal Standard

"Upon timely application anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." CR 24.02(1).

B. The Commonwealth's Motion is Timely

Since becoming aware of this action, the Commonwealth has diligently investigated and pursued its potential claims against Norton. See Section I.B., *supra*, for a full discussion of the timeliness standard and the factors weighing in favor of a grant of intervention. Accordingly, the Commonwealth's Motion to Intervene is timely and the Court should permit intervention.

C. The Commonwealth's Claims and the Main Action Have Questions of Law and Fact in Common

The Commonwealth should be permitted to intervene because of the identity of its claims with those raised by the existing parties. Because of this overlap, a number of questions of law and fact are in common. The Commonwealth seeks an accounting of the funds which Kosair transferred to Norton for the purpose of operating Kosair Children's Hospital, and also any other funds raised by Norton using the Kosair name under the premise that they would be used to support Kosair's charitable mission. Such an accounting will settle questions of fact relating to whether or not Norton is properly using funds that have been dedicated to charitable purposes. Additionally, there are questions of law in common, such as whether or not a constructive trust was established by virtue of the Kosair-Norton agreements and whether the terms of that trust have been violated. It would be an inefficient use of the parties' and the Court's resources to litigate these matters in an entirely separate proceeding. Because there are numerous questions of law in fact in common between the Commonwealth's claims and the main action, the Commonwealth should be permitted to intervene.

D. Intervention by the Commonwealth Will Not Unduly Delay or Prejudice the Original Parties

The existing parties will not suffer any undue delay or prejudice should the Commonwealth be permitted to intervene. As discussed earlier, this action is still in its infancy.

Discovery has not commenced and Norton has yet to file an Answer. All of the parties will have adequate time to respond to the Commonwealth's allegations and the parties will not be denied due process. On the other hand, should intervention in this proceeding not be granted, the parties and the Court will be forced to bear the administrative burden of a somewhat parallel proceeding that the Commonwealth will be forced to file in order to assert its interests. Because the parties will suffer no undue delay or prejudice, the Commonwealth should be permitted to intervene in the present action.

### CONCLUSION

Charities "rebound to the interest of the Commonwealth, and good policy requires that *the beneficent objects of the founder should be carried out and enforced.*" Chambers, 40 Ky. at 220 (emphasis added). In pursuing intervention, the Commonwealth seeks to exercise the full weight of its authority to pursue the enforcement of the purposes for which the assets that are the subject of this case were dedicated. Under its constitutional, statutory, and common law authority by virtue of the *parens patriae* doctrine, and the Kentucky Rules of Civil Procedure, the Commonwealth should be granted intervention in order to protect the interest that the Commonwealth and its citizens has in the rightful and appropriate use of funds dedicated to serving charitable purposes.

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JEFFERSON CIRCUIT COURT  
DIVISION 3  
JUDGE MITCH PERRY

KOSAIR CHARITIES COMMITTEE, INC.

PLAINTIFF

v.

NORTON HEALTHCARE, INC.,  
NORTON HOSPITALS, INC., and  
NKC, INC.

DEFENDANTS

**ORDER GRANTING THE COMMONWEALTH'S**  
**MOTION TO INTERVENE**

The Court, having considered the Commonwealth's motion to intervene as a party plaintiff, and being otherwise sufficiently advised;

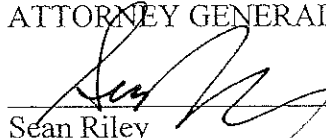
IT IS HEREBY ORDERED that the motion shall be and is GRANTED. The Commonwealth is hereby permitted to intervene as a party plaintiff. The Clerk of Jefferson Circuit Court is instructed to file 1) the Complaint tendered with the Commonwealth's motion to intervene and 2) the Joint Motion to Appoint a Special Master Commissioner tendered with the Commonwealth's motion to intervene as of the date of entry of this Order.

Entered this \_\_\_\_ day of July, 2014.

\_\_\_\_\_  
JUDGE, JEFFERSON CIRCUIT COURT

**Tendered by:**

ATTORNEY GENERAL JACK CONWAY

  
Sean Riley

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KOSAIR CHARITIES COMMITTEE, INC.

PLAINTIFF

and

COMMONWEALTH OF KENTUCKY ex rel.  
JACK CONWAY in his official capacity as  
ATTORNEY GENERAL

INTERVENING PLAINTIFF

v.

NORTON HEALTHCARE, INC.,  
NORTON HOSPITALS, INC., and  
NKC, INC.

DEFENDANTS

### COMPLAINT

The Commonwealth of Kentucky ex rel. Jack Conway in his official capacity as Attorney General (the “Commonwealth”), for its Complaint against Norton Healthcare, Inc. (“Norton Healthcare”), Norton Hospitals, Inc. (“Norton Hospitals”), and NKC, Inc. (“NKC”) (collectively, “Norton”) states as follows:

#### I. NATURE OF THE ACTION

1. Since 1981, Kosair Charities Committee, Inc. (“Kosair”), the charitable arm of the Kosair Shrine Temple, has been party to a number of agreements with Norton for the purpose of developing and operating a pediatric hospital in downtown Louisville called Kosair Children’s Hospital (“KCH”).

2. Kosair is a Kentucky nonprofit corporation, which has devoted hundreds of millions of dollars in support of charitable pediatric and children’s causes within the community.

3. Kosair's charitable mission has been to protect the health and well-being of the children in Kentucky and Southern Indiana, by providing funding support for clinical services, research, pediatric healthcare, education and child advocacy.

4. The agreements between Kosair and Norton established a trust with Norton as a trustee (at a minimum, as a constructive trustee), having fiduciary obligations to Kosair as the donor.

5. Kosair has donated assets and funds to Norton, expended funds and fundamentally altered its operations in accordance with and in consideration of this commitment of Norton under the Various Agreements.

6. Kosair has a continuing responsibility to its donors to ensure that their contributions are being directed to KCH and KCH-related projects.

7. By information and belief, Norton does not prepare separate financial statements, prepare independent budgets, or maintain separate bank accounts for KCH. These funds are simply commingled with Norton's other revenues and assets.

8. By information and belief, Norton applies rates to uninsured patients, allegedly supported by Kosair's contributions which exceeded those of the chargemaster rates (extremely high rates hospitals set that serve as the basis for negotiations with payors).

## **II. THE PARTIES**

9. The Commonwealth of Kentucky is the sovereign political entity which exists pursuant to the 1891 Constitution of Kentucky. The Commonwealth comes to this Court by and through its Attorney General, Jack Conway, who is the Commonwealth's chief law officer pursuant to Section 91 of the Constitution of Kentucky and KRS 15.020. At common law, the Commonwealth has *parens patriae* authority over the state's charitable assets.

10. Norton Healthcare, Inc. is a Kentucky nonprofit healthcare system and is a party to one or more agreements with Kosair that provide for, *inter alia*, funding for KCH.

11. Norton Hospitals, Inc. is a Kentucky nonprofit corporation which has assumed certain duties as ongoing co-trustee for funds contributed by Kosair at KCH.

12. NKC, Inc. is a Kentucky corporation that is inactive but in good standing and is a party to one or more agreements with Kosair that provide for, *inter alia*, funding for KCH.

### **III. JURISDICTION AND VENUE**

13. The Jefferson Circuit Court is a court of general jurisdiction capable of hearing all justiciable claims not vested in some other court.

14. The Court has jurisdiction over disputes and interests in real property located in its jurisdiction.

15. Because the acts and omissions giving rise to the Commonwealth's claims occurred in Jefferson County, jurisdiction is proper in this Court.

### **IV. STANDING**

16. To support standing, the interest of a party must be a present or substantial interest as distinguished from a mere expectancy.

17. The Commonwealth, as *parens patriae*, has a present and substantial interest in the proper use and expenditure of charitable assets generally, and charitable trust assets.

18. Because the Commonwealth's interest is present and substantial, the Commonwealth has standing.



## **V. CLAIMS**

### **COUNT I – Constructive Trust**

19. The Commonwealth realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 18 as if fully set forth herein.

20. Norton, acting as trustee, has wrongfully disposed of trust property and, upon information and belief, in so doing, has acquired other property. As a result, the Commonwealth is entitled to either a constructive trust on the property so acquired or to the imposition of an equitable lien upon the property to secure its claim against Norton for breach of trust. Such trust will accrue to the benefit of Kosair and KCH, the proper beneficiaries.

21. Accordingly, this Court ought to order an accounting and determine whether the property has been wrongfully disposed of by Norton and, as to such property wrongfully disposed of, this Court ought to enforce a constructive trust on any property acquired as a result or enforce an equitable lien upon that property.

### **COUNT II – Breach of Trust**

22. The Commonwealth realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 21 as if fully set forth herein.

23. The contributions paid by Kosair to Norton established a charitable trust with an ascertainable res.

24. The beneficiary of the charitable trust was sufficiently identified and Norton was the trustee.

25. Norton breached the trust by, among other actions as described above, comingling the trust funds with other funds of Norton's, failing to account to Kosair for the use of the funds and using the funds in a manner inconsistent with the trust documents and the donor's intent.

26. Accordingly, the Court should order Norton to account for all funds it has received and to refund to Kosair all funds which Norton cannot establish were utilized pursuant to the trust instruments — the Several Agreements — and consistent with Kosair's intent.

### **COUNT III – Resulting Trust**

27. The Commonwealth realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 26 as if fully set forth herein.

28. Because the Norton and Kosair have always contemplated that a trust would be created, where Norton would act as trustee for all monies transferred for the benefit of Kosair Children's Hospital by Kosair, and in view of the fact that Norton did not treat the donations from Kosair as trust property, this Court ought to impose a resulting trust upon any funds remaining, identified by an accounting, which should be ordered by this Court.

### **COUNT IV – Accounting**

29. The Commonwealth realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 28 as if fully set forth herein.

30. As charitable trustee, Norton owes a duty to the Commonwealth to account for all funds contributed for the benefit of Kosair Children's Hospital.

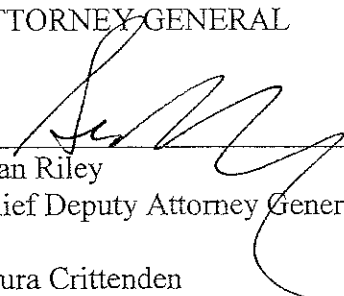
31. Accordingly, this Court ought to order an accounting by Norton of all funds contributed by Kosair for all funds contributed for the benefit of Kosair Children's Hospital.

WHEREFORE, the Commonwealth of Kentucky ex rel. Jack Conway in his official capacity as Attorney General, by and through counsel, respectfully requests that this Court enter a judgment in its favor and against Norton Healthcare, Inc., Norton Hospitals, Inc., and NKC, Inc. providing the following:

- i. An accounting of all funds paid by Kosair to Norton and its predecessors, affiliates, and subsidiaries;
- ii. An accounting of all funds raised by Norton for the benefit of Kosair Children's Hospital;
- ii. Establishment of constructive and resulting trusts;
- iii. A trial by jury;
- iv. Any other further relief to which it may appear entitled.

Respectfully submitted,

JACK CONWAY  
ATTORNEY GENERAL



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*Counsel for the Commonwealth*

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that a true and accurate copy of the foregoing was this 30<sup>th</sup> day of July, 2014, served by mailing a copy via first-class mail to:

Counsel for Plaintiff:

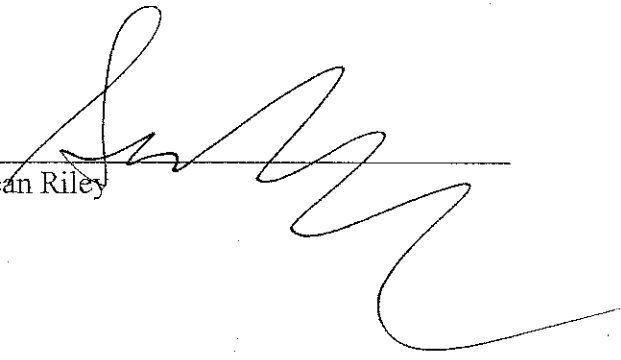
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Sean Riley



KOSAIR CHARITIES COMMITTEE, INC.

PLAINTIFF

and

COMMONWEALTH OF KENTUCKY ex rel.  
JACK CONWAY in his official capacity as  
ATTORNEY GENERAL

INTERVENING PLAINTIFF

v.

NORTON HEALTHCARE, INC.,  
NORTON HOSPITALS, INC., and  
NKC, INC.

DEFENDANTS

**JOINT MOTION TO APPOINT  
SPECIAL MASTER COMMISSIONER**

The Commonwealth of Kentucky ex rel. Jack Conway in his official capacity as Attorney General (the “Commonwealth”), and Kosair Charities Committee, Inc. (“Kosair”) by and through counsel, move the Court to appoint a special master commissioner in this action to perform a full and fair accounting for the operations and finances of Kosair Children’s Hospital (“KCH”). In support of their Motion, movants state as follows:

1. This action was commenced on May 8, 2014 on a Complaint by Kosair Charities Committee, Inc. (“Kosair”) against Norton Healthcare, Inc., Norton Hospitals, Inc., and NKC, Inc. (collectively, “Norton”). Kosair subsequently filed its First Amended Complaint on June 9, 2014.

2. Each circuit court in the Commonwealth has authority to appoint a master commissioner to act as a receiver and perform other duties, including the execution of judicial sales under the terms of a court order or judgment. *See* KRS 31A.010(1); CR 53.01; CR

53.02(1)-(2). Additionally, with express authority from the Chief Justice, a circuit court may refer other duties to a master commissioner in “special cases.”<sup>2</sup> *See* CR 53.01; CR 53.02(3).

3. A case “may be regarded as special due to complexity of issues, . . . matters of account involving complex or numerous transactions, or similar exceptional circumstances.” CR 53.02(3); *see also* Administrative Procedures of the Court of Justice (“AP”) IV, Sec. 4(1).

4. Here, Kosair and the Commonwealth make several allegations against Norton that are financial in nature, including an allegation that Norton has breached one or more affiliation agreement with Norton regarding the use of charitable assets which Kosair transferred to Norton for the operation and upkeep of KCH. Kosair and the Commonwealth further contend that Norton is concealing information concerning the operations and finances of KCH by consolidating the Hospital’s separate operations into one set of financial statements for the entire Norton “system,” thereby concealing the revenues, expenses, and surplus generated by KCH and permitting Norton to use such surplus for the benefit of Norton’s other facilities. Thus, this litigation implicates matters of account involving complex and numerous transactions, qualifying it as a “special case” within the meaning of CR 53.02(3).

5. Reference of the case to a special master commissioner for the purposes of performing a full and accurate accounting for the operations and finances of KCH would help the court and the parties evaluate the claims and therefore would aid the court and the parties in resolving the case.

WHEREFORE, the Commonwealth of Kentucky ex rel. Jack Conway in his official capacity as Attorney General and Kosair Charities Committee, Inc., in accordance with KRS

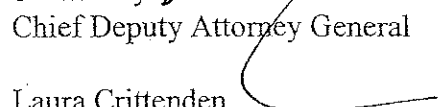
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<sup>2</sup> A master commissioner in a “special case” or proceeding must be qualified as an attorney. CR 53.02(3).

Chapter 31A, CR 53, and the Administrative Procedures of the Court of Justice, move the Court to appoint a special master commissioner and order a report prepared on the issues raised herein.

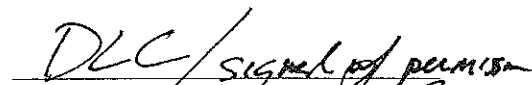
Respectfully submitted,

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*Counsel for Kosair*

NOTICE

The foregoing motion will be heard at the regular civil motion hour for the Jefferson Circuit Court, Division 3, at the Courthouse in Louisville, Kentucky, on the \_\_\_ day of August at 9:45 a.m., or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

It is hereby certified that on this \_\_\_ day of ~~July~~<sup>19</sup>, 2014, the foregoing document was served via electronic mail to the following:

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