

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

Case No. 2020-0470

Scott Paine

v.

Ride-Away, Inc. d/b/a Mobility Works

On appeal from a decision of the
Rockingham County Superior Court

**SURREPLY BRIEF OF DEFENDANT-APPELLEE
RIDE-AWAY, INC. d/b/a MOBILITY WORKS**

(Leave to file granted by Order of July 19, 2021)

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August 9, 2021

Oral argument requested,
to be presented by Mark D. Attorri

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ARGUMENT

THE ILLEGAL DRUG USE EXCLUSION OF RSA 354-A:2, IV APPLIES TO THIS CASE.

In its initial brief, Mobility Works advanced three reasons why the Court should reject the plaintiff's contention that the illegal drug exclusion of RSA 354-A:2, IV is "irrelevant" to this case. First, Mobility Works showed that the plaintiff's contention is inconsistent with decisions by other courts that have applied identical or similar exclusions to hold that medical marijuana use is outside the scope of statutory anti-discrimination protections. (Def. Br. 19-23.) Second, it showed that the plaintiff's interpretation of the exclusion would lead to absurd results. (Id. 23-24.) Third, Mobility Works argued that even if the plaintiff's interpretation were accepted, his requested accommodation is unreasonable as a matter of law. (Id. 24-25.) The plaintiff's reply attempts to rebut these reasons but, as shown below, the rebuttals are without merit.

A. Application of the exclusion is consistent with decisions by other courts.

1. Harrisburg Area Community College v. Pennsylvania Human Rights Commission

Mobility Works cited two decisions in which appellate courts applied exclusions identical to the one in RSA 354-A:2, IV to hold that medical marijuana use was outside the scope of statutory anti-discrimination protections. The first was Harrisburg Area Community College v. Pennsylvania Human Rights Commission, 245 A.3d 283 (Pa. Comm. Ct. 2020) ("HACC") (Def. Br. 19-20).

The plaintiff makes a strenuous effort to distinguish HACC, claiming that the holding in that case was based not on the illegal drug exclusion of the two anti-discrimination statutes in question—the Pennsylvania Human Rights Act (“PHRA”) and the Pennsylvania Fair Educational Opportunities Act (“PFEOA”)—but rather on the state’s Medical Marijuana Act (“MMA”). (Reply 11-12.) This contention ignores the language of the opinion, which clearly states that “both statutes [PHRA and PFEOA] exclude disability discrimination protections for current users of illegal controlled substances with regard to their use of illegal substances.” 245 A.3d at 296-97. Elsewhere the court explains that the respondent college had no obligation to accommodate the student’s medical marijuana use “because the General Assembly specifically incorporated the Federal CSA into PHRA and PFEOA.” Id. at 298. The concurring opinion states that the only way the outcome of the case could be different would be if the legislature were to “amend the PHRA and the PFEOA to remove the ‘as defined in Section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802)’ restriction from its description of illegal use of a controlled substance.” Id. at 299. These and other statements make it abundantly clear that the court’s decision was based primarily on the illegal drug exclusion.

The plaintiff points to the court’s statement that

it is not PHRA or any particular interpretation thereof that commands our conclusion here. Rather, it is the MMA, or, more specifically, the absence of any provision in the MMA providing the sort of mandate that the PHRC [Pennsylvania Human Rights Commission] seeks, that drives our holding.

(Reply 12, quoting 245 A.3d at 295.) The plaintiff fails to consider the context in which this statement was made. The court made the statement to explain why the PHRC’s interpretation of the PHRA (favoring the student marijuana user) was not entitled to judicial deference. The court acknowledged that “the PHRC’s interpretation of PHRA and PFEOA may be entitled to deference where those statutes are ambiguous, because the PHRC is responsible for implementing and enforcing them,” but it found that “PHRA and PFEOA are *not ambiguous*.” Id. at 296 (emphasis added). Thus, the case did not involve a choice between competing interpretations of the two statutes; rather, the court’s analysis was “drive[n]” by whether the MMA effectively *amended* those statutes, a matter about which the agency had no expertise warranting judicial deference.¹ In other words, the court focused most of its analysis on the MMA only because it considered the illegal drug exclusion of the PHRA and the PFEOA to be so unambiguously controlling. See id. at 298 (“The General Assembly has clearly spoken . . .”).

Notably, the HACC court did not deny that the complainant suffered from a disability, nor did it rule that her marijuana use deprived her of *all* protection under the statutes. See HACC, 245

¹ See HACC, 245 A.3d at 296 (“when an administrative agency’s interpretation is inconsistent with the statute itself, or when the statute’s meaning is unambiguous, such an administrative interpretation carries little weight”); id. at 298 (“[T]he General Assembly exercised its law making authority to include a provision in PHRA and PFEOA to require compliance with the Federal CSA. [In] enacting the MMA, the legislature chose not to remove those restrictions from PHRA or PFEOA.”).

A.3d at 291 n.8 (“The question is not whether [the student] has a disability, it is clear that she does, Post-Traumatic Stress Disorder and Irritable Bowel Syndrome.”). “Rather, the question [was] whether HACC [had to] accommodate the disability by allowing the use of medical marijuana.” *Id.* The court found that the express incorporation of the federal CSA into the PHRA and PFEOA, combined with the legislature’s failure to amend those provisions when it passed the MMA, evinced a clear intent “that current users of illegal drugs not be subject to protection *with regard to their marijuana use.*” *Id.* at 297 (emphasis added).

Even the concurring justice—who openly wished for a different result—agreed with her colleagues that the court was constrained to apply the exclusion and hold there was no duty to accommodate the use of medical marijuana. *See id.* at 298, 299 (“I agree with the majority that we are bound by statute to reverse the [PHRC]’s interlocutory order. . . . Where the language of the governing statute is clear (or clear enough), the solution is legislative—and not judicial—adjustment.”). This Court should reach the same conclusion.

2. Assenberg v. Anacortes Housing Authority

Mobility Works also cited Assenberg v. Anacortes Housing Authority, 268 Fed. Appx. 643 (9th Cir. 2008) (Def. Br. 20-21), which applied an identical exclusion in the federal Fair Housing Act (“FHA”) to hold that the manager of a publicly assisted housing facility “did not have a duty to reasonably accommodate [a tenant’s] medical marijuana use.” *Id.* at 643. Assenberg is particularly instructive since the bill that added the illegal drug

exclusion to RSA 354-A was intended to make the New Hampshire statute “substantially equivalent” to the FHA. See N.H.H.R. Jour. 230 (1992) (attached, *infra* 19).

The plaintiff argues that the Ninth Circuit’s decision in Assenberg was erroneous, citing a later memorandum issued by the U.S. Department of Housing and Urban Development (the “HUD memo”). (Reply 13, citing HUD memo attached to Reply.) But there is nothing in the HUD memo that undermines Mobility Works’ position. The HUD memo takes the view that the FHA’s illegal drug exclusion does not categorically remove medical marijuana users from protection under the act; “Rather, it prevents a current illegal drug user or addict from asserting that the drug use or addiction is itself” a disability. (HUD memo at 7; Reply 26.) This is not inconsistent with the holding in HACC (*supra* 7-8, citing 245 A.3d at 291 n.8), nor does it conflict with Mobility Works’ position here. Mobility Works has never argued that the plaintiff is not entitled to *any* accommodation for his PTSD; it only argues that he cannot compel Mobility Works to accommodate his use of medical marijuana.

Moreover, as the plaintiff is forced to concede, the HUD memo expressly *supports* the result in Assenberg. Like Assenberg itself, the HUD memo concludes that public housing managers have no duty to accommodate tenant use of medical marijuana; it simply takes a different analytical path to that conclusion. Whereas Assenberg relies on the statutory exclusion, the memo takes the alternative route (also mapped in Mobility Works’ brief) of finding the accommodation unreasonable as a matter of law. See

HUD memo at 7 (Reply 26) (“Accommodations allowing the use of medical marijuana in public housing or other federally assisted housing are not reasonable under the [FHA].”).² As Mobility Works has shown (Def. Br. 24-25), there is no practical difference between these two analytical paths.

3. ADA and Rehabilitation Act cases.

The plaintiff insists that Mobility Works’ citation to case law under the ADA and federal Rehabilitation Act is “fatally flawed” because the wording of those statutes differs somewhat from RSA 354-A. (Reply 7-9.) Mobility Works has already addressed this point (Def. Br. 21-22) and needs not discuss it further except to add that the plaintiff seems to be contradicting his opening brief, in which he correctly argued that “this Court looks to federal authorities that interpret similar statutes for guidance” when construing RSA 354-A. (Pl. Br. 16 & n.3.)

4. Inapposite cases argued in the reply (Barbuto, Hudnell).

The plaintiff tries to rehabilitate his main authority, Barbuto v. Advantage Sales and Marketing, LLC, 477 Mass. 456, 78 N.E.3d 37 (2017), by arguing that the Massachusetts anti-discrimination statute (“MLAD”) contains an illegal drug

² The HUD memo relied on a state court employment law decision in reaching this conclusion. See HUD memo at 8-9 (Reply 27-28), citing Ross v. RagingWire Telecommunications, Inc., 132 Cal. App. 4th 590, 33 Cal. Rptr. 3d 803, 808 (2005), affirmed and superseded by, 42 Cal. 4th 920, 70 Cal. Rptr. 3d 382, 174 P.3d 200 (2008).

exclusion “almost identical to [RSA] 354-A’s.” (Reply 9.) In fact, the exclusion in the MLAD could not be more different from the one in RSA 354-A since it incorporates *state* drug law, not federal. See G.L. c. 151B, §1(17) (excluding “current, illegal use of a controlled substance *as defined in section one of chapter ninety-four C*”) (emphasis added). Nor does the incorporated section of the Massachusetts code refer to federal law. See G.L. c. 94C, §1. The plaintiff must excavate yet another level deeper before unearthing any reference to the federal CSA—and that reference is made by the executive branch, in an implementing regulation, not by the legislature. (Reply 10, citing G.L. c. 94C, §2(a); 105 Code Mass. Regs. 700.002.) Thus, unlike RSA 354-A, it cannot properly be said that the MLAD contains a *legislative* command that courts are to be guided by the federal CSA in applying its provisions.

Even more importantly, there is simply no mention of the illegal drug exclusion anywhere in the Barbuto opinion; it would be pure speculation to think the court ever even considered the exclusion when deciding the case.³ The plaintiff’s effort to extract support from Barbuto on the issue of the exclusion is creative, but baseless.

The plaintiff also cites a pre-trial order from Hudnell v. Thomas Jefferson University Hospitals, Inc., 2021 WL 63252

³ Contrary to the plaintiff’s characterization, Mobility Works never argued that Barbuto is inapposite “because [the MLAD] does not contain a drug proviso” like the one in RSA 354-A. (Reply 9.) What Mobility Works argued was that the case does not “*make any reference to*” such an exclusion (Def. Br. 18), which is beyond dispute.

(E.D. Pa., Jan. 7, 2021), in which the trial judge supposedly rejected an argument like the one made by Mobility Works. (Reply 6.) It is hard to tell what relevance, if any, Hudnell has to the present case. The defendant in Hudnell seems to have been arguing that the plaintiff there failed to allege any disability other than her marijuana use (an argument Mobility Works does not make here) and that this warranted dismissal of her accommodation claim under Pennsylvania case law including HACC. The judge disagreed, noting that the plaintiff “has alleged a disability apart from her marijuana use.” Id. *2. Why this should have justified a different result from the one in HACC is not explained—a puzzling omission given the Hudnell court’s observation that the student in HACC likewise alleged a disability separate and apart from her use of marijuana. Id. Whatever the Hudnell order was trying to say, it deserves little or no weight since the issue was of secondary importance to the case,⁴ and because the case itself is still pending in the trial court. See the attached docket, *infra* 21.

B. The plaintiff’s interpretation of the exclusion would lead to absurd results.

Mobility Works has also shown that the plaintiff’s argument regarding RSA 354-A:2, IV “proves too much” since it would allow employees to sue their employers for failing to accommodate *any* drug use—even drug use that was obviously illegal—so long as

⁴ The plaintiff in Hudnell “requested several accommodations besides marijuana use.” Id. *2 n. 2. She has also raised claims of racial discrimination. Hudnell, 2020 WL 5749924 at *2 (Sept. 25, 2020).

the employee could point to an underlying disability he was trying to treat. (Def. Br. 23-24.)

The plaintiff dismisses this argument as “nonsense,” saying it is highly unlikely such a scenario would ever occur. (Reply 14.) The barb is ironic, since the legislators who passed RSA 354-A would surely have considered it “nonsense” to suggest that their statute might someday be construed to require employers to accommodate the commission of a federal crime. The plaintiff also overlooks the fact that employees have already been known to sue their employers for failing to accommodate marijuana use that was illegal under state law; the plaintiff cites one such case in his reply.⁵

In any event, the plaintiff misconceives Mobility Works’ argument. Contrary to his characterization, Mobility Works did not make any prediction that acceptance of the plaintiff’s argument would “unleash of flood” of meritless, drug-based discrimination claims. (Reply 14.) Rather, the point of its *reductio ad absurdum* was to show that the logic of the plaintiff’s argument would *allow* such claims—indeed, it would have allowed them even prior to the enactment of RSA 126-X—and that this is something the legislature could not possibly have intended. Thus, the plaintiff’s interpretation must necessarily be incorrect and should be rejected. See Working Stiff Partners,

⁵ See Hudnell, 2021 WL 63252 (cited in Reply at 6) (claim for failure to accommodate marijuana use based on discharge following positive drug test, where plaintiff’s state medical marijuana card was expired at the time of the test). See also Potts v. American Castings, LLC, 2021 WL 328537 (N.D. Okl., Feb. 1, 2021) (same; plaintiff did not have a state medical marijuana license).

LLC v. City of Portsmouth, 172 N.H. 611, 620 (2019) (“[I]t is a familiar principle of statutory construction that one should not construe a statute or ordinance to lead to an absurd result that the legislative body could not have intended.”); State v. Breest, 167 N.H. 210, 212-13 (2014) (“[W]e will not interpret statutory language in a literal manner when such a reading would lead to an absurd result.”).

C. Even if the plaintiff’s interpretation is accepted, his requested accommodation is unreasonable as a matter of law.

Finally, Mobility Works showed that even if one were to accept the plaintiff’s interpretation of the illegal drug exclusion, RSA 354-A’s incorporation of federal law would still compel the conclusion that his requested accommodation (federally prohibited marijuana use) is unreasonable as a matter of law. (Def. Br. 24-25.) This is the approach taken by several of the cases cited in Mobility Works’ brief and by the HUD memo cited in the reply.⁶

The plaintiff argues that the term “illegal use” as used in RSA 354-A:2, IV should be construed to mean “illegal” under state law, not federal law. (Reply 10-11.) There is no textual

⁶ See, e.g., Eccleston v. City of Waterbury, 2021 WL 1090754 (D. Conn., Mar. 22, 2021) at *8 (“using marijuana is not a reasonable accommodation”) (quoting Kamkeaina v. Armstrong Produce, Ltd., 2019 WL 1320032 (D. Haw., Mar. 22, 2019)); Ross, 174 P.3d at 204 (finding this point “perhaps too obvious to have generated [much] appellate litigation”); HUD memo at 7-9 (Reply 26-28) (citing Ross). See also Albuquerque Public Schools v. Sledge, 2019 WL 3755954 at *12 (D.N.M., Aug. 8, 2019) (collecting cases).

basis for such a limitation. If the proviso’s incorporation of the federal CSA serves only to define the term “controlled substance,” as the plaintiff argues, then the only plausible interpretation of “illegal use” is that it refers to drug use violating *any* applicable law, state or federal. See Coats v. Dish Network, LLC, 350 P.3d 849, 851-52 (Colo. 2015) (en banc) (declining to engraft state law limitation onto “lawful activity” provision of Colorado anti-discrimination law; “Nothing in the language of the statute limits the term ‘lawful’ to state law. Instead, the term is used in its general, unrestricted sense, indicating that a ‘lawful’ activity is that which complies with applicable ‘law,’ including state and federal law.”). When this Court asks applicants for admission if they have ever been convicted of a crime, it does not expect them to limit their answer only to crimes committed under state law; the plaintiff’s effort to restrict the meaning of “illegal use” in RSA 354-A is just as unreasonable.

The plaintiff’s arbitrarily narrow reading draws no support from Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries, 230 P.3d 518 (Or. 2010) (cited in Reply at 10). The illegal drug exclusion at issue there included a specific clause stating that the exclusion did not apply to drug use authorized by state law. Id. at 525 (quoting O.R.S. 659A.124). There is no such clause in RSA 354-A:2, IV.

Cease v. Housing Authority of Indiana County, 247 A.3d 57 (Pa. Comm. Ct. 2021), also cited in the reply (Reply 10), was poorly decided and should not be followed. In Cease, a divided panel of the state court construed a *federal* housing statute in a

manner that conflicts with both federal case law and the HUD memo discussed above. The decision has been appealed (see the attached docket, *infra* 27) and will likely be reversed for the reasons stated in the dissenting opinion, *id.* at 65-71.

CONCLUSION

For these reasons, and for the reasons set forth in its initial brief, Mobility Works respectfully requests this Honorable Court to affirm the decision below.

Respectfully submitted,

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MOBILITY WORKS

By its attorneys,

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CERTIFICATE OF COMPLIANCE

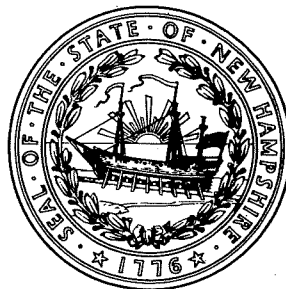
I hereby certify that this brief complies with the requirements of Rule 16, Rule 26, and the Court's order of July 19, 2021. The brief contains 2,983 words from the page immediately following the Table of Authorities to the signature of counsel.

Copies of the foregoing brief have been forwarded to all counsel of record via the Court's electronic filing system.

/s / Mark D. Attorri

Mark D. Attorri

NEW HAMPSHIRE GENERAL COURT



JOURNAL
of the
HOUSE OF REPRESENTATIVES

Containing the
1992 Session
January 8, 1992
through
June 17, 1992

HAROLD W. BURNS
SPEAKER

JAMES A. CHANDLER
CLERK

HB 778-FN, relative to the laws against discrimination. OUGHT TO PASS WITH AMENDMENT.

Rep. Mary E. Molner for State Institutions and Housing: The intent of House Bill 778 is to amend RSA 354-A to become substantially equivalent to federal fair housing law. Protection against discrimination for families with children has been included. Regulations prohibiting sexual harassment and discrimination against pregnant women are codified. Vote 9-1.

4280L

Amendment

Amend the bill by replacing all after the enacting clause with the following:

1 Law Against Discrimination; Familial Status Category Added. RSA 354-A is repealed and reenacted to read as follows:

CHAPTER 354-A

STATE COMMISSION FOR HUMAN RIGHTS

354-A:1 Title and Purposes of Chapter. This chapter shall be known as the "Law Against Discrimination." It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights. The general court hereby finds and declares that practices of discrimination against any of its inhabitants because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. A state agency is hereby created with power to eliminate and prevent discrimination in employment, in places of public accommodation and in housing accommodations because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

354-A:2 Definitions. In this chapter:

I. "Commercial structure" means any building, structure, or portion thereof which is continuously or intermittently occupied or intended for occupancy by a commercial or recreational enterprise, whether operated for profit or not, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

II. "Commission," unless a different meaning clearly appears from the context, means the state commission for human rights created by this chapter.

III. "Covered multifamily dwellings" means:

(a) Buildings consisting of 4 or more units if such buildings have one or more elevators; and

(b) Ground floor units in other buildings consisting of 4 or more units.

IV. "Disability" means, with respect to a person:

(a) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(b) A record of having such an impairment; or

(c) Being regarded as having such an impairment.

ation. OUGHT TO PASS WITH

ousing: The intent of House Bill equivalent to federal fair housing with children has been included. discrimination against pregnant

clause with the following:

Category Added. RSA 354-A is

MAN RIGHTS

apter shall be known as the "Law exercise of the police power of the h and peace of the people of this nstitution of this state concerning lares that practices of discrimina- sex, race, creed, color, marital or national origin are a matter of eatens the rights and proper privi- s and foundation of a free demo- safety and general welfare of the eated with power to eliminate and of public accommodation and in e, creed, color, marital status, fa- nal origin as herein provided; and ven general jurisdiction and power

ing, structure, or portion thereof intended for occupancy by a com- d for profit or not, and any vacant ruction or location thereon of any

g clearly appears from the context, ed by this chapter.

f such buildings have one or more

sisting of 4 or more units.

on: substantially limits one or more of

or

ment.

Provided, that "disability" does not include current, illegal use of or addiction to a controlled substance as defined in the Controlled Substances Act 21 U.S.C. 802 sec. 102.

V. "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

VI. "Employee" does not include any individual employed by his parent, spouse or child, or any individual in the domestic service of any person.

VII. "Employer" does not include a club exclusively social, or a fraternal, charitable, educational or religious association or corporation, if such club, association or corporation is not organized for private profit, nor does it include any employer with fewer than 6 persons in his employ, but shall include the state and all political subdivisions, boards, departments and commissions thereof.

VIII. "Employment agency" includes any person undertaking to procure employees or opportunities to work.

IX. "Familial status" means one or more individuals, who have not attained the age of 18 years of age, and are domiciled with

(a) A parent or another person having legal custody of such individual or individuals; or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person. "Familial status" also means any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

X. "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

XI. "Multiple dwelling" means 2 or more dwellings, as defined in paragraph V, occupied by families living independently of each other.

XII. "National origin" includes ancestry.

XIII. "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, trustees in bankruptcy, receivers, and the state and all political subdivisions, boards, and commissions thereof.

XIV. "Place of public accommodation" includes any inn, tavern or hotel, whether conducted for entertainment, the housing or lodging of transient guests, or for the benefit, use or accommodations of those seeking health, recreation or rest, any restaurant, eating house, public conveyance on land or water, bathhouse, barbershop, theater, golf course, sports arena, health care provider, and music or other public hall, store or other establishment which caters or offers its services or facilities or goods to the general public. "Public accommodation" shall not include any institution or club which is in its nature distinctly private.

XV. "Unlawful discriminatory practice" includes:

(a) Practices prohibited by RSA 354-A;

(b) Practices prohibited by the federal Civil Rights Act of 1964, as amended (PL 88-352);

(c) Practices prohibited by Title VII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601-3619);

**United States District Court
Eastern District of Pennsylvania (Philadelphia)
CIVIL DOCKET FOR CASE #: 2:20-cv-01621-GJP**

HUDNELL v. THOMAS JEFFERSON UNIVERSITY
HOSPITAL
Assigned to: HONORABLE GERALD J. PAPPERT
Referred to: MAGISTRATE JUDGE ELIZABETH T. HEY
(Settlement)
Cause: 42:1983 Civil Rights (Employment Discrimination)

Date Filed: 03/24/2020
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights:
Employment
Jurisdiction: Federal Question

Plaintiff

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ATTORNEY TO BE NOTICED

V.

Defendant

**THOMAS JEFFERSON
UNIVERSITY HOSPITAL**
TERMINATED: 06/04/2020

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TERMINATED: 06/04/2020

Defendant

**THOMAS JEFFERSON
UNIVERSITY HOSPITALS, INC.**

represented by **SIDNEY R. STEINBERG**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DANIEL FREDERICK THORNTON
(See above for address)
TERMINATED: 02/15/2021

DAVID E. RENNER
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Date Filed	#	Docket Text
03/24/2020	<u>1</u>	APPLICATION to Proceed in forma pauperis filed by DONNA R. HUDNELL..(bw,) (Entered: 03/26/2020)
03/24/2020	<u>2</u>	COMPLAINT against THOMAS JEFFERSON UNIVERSITY HOSPITAL, filed by DONNA R. HUDNELL.(bw,) NO ENVELOPE. Modified on 3/26/2020 (bw,). (Entered: 03/26/2020)
03/24/2020	<u>3</u>	REQUEST FOR APPOINTMENT OF COUNSEL filed by DONNA R. HUDNELL..(bw,) (Entered: 03/26/2020)
03/31/2020	<u>4</u>	ORDER THAT LEAVE TO PROCEED IN FORMA PAUPERIS IS GRANTED. THE COMPLAINT IS DEEMED FILED. THE CLERK OF COURT SHALL ISSUE SUMMONSES AS OUTLINED HEREIN. SERVICE OF THE SUMMONSES AND THE COMPLAINT SHALL BE MADE UPON THE DEFENDANTS BY THE US MARSHALS SERVICE. HUDNELL WILL BE REQUIRED TO COMPLETE A USM-285 FORM SO THAT THE MARSHALS CAN SERVE THE DEFENDANT, ETC. SIGNED BY HONORABLE MICHAEL M. BAYLSON ON 3/31/20. 3/31/20 ENTERED AND COPIES E-MAILED TO PRO SE PLAINTIFF.(rf,) (Entered: 03/31/2020)
03/31/2020	<u>5</u>	PRO SE NOTICE RE: GUIDELINES EMAILED TO PRO SE PLAINTIFF HUDNELL ON 3/31/20. (rf,) (Entered: 03/31/2020)
04/22/2020	<u>6</u>	ORDER THAT THIS CASE IS REASSIGNED FROM HONORABLE MICHAEL M. BAYLSON TO HONORABLE GERALD J. PAPPERT FOR ALL FURTHER PROCEEDINGS. SIGNED BY CLERK OF COURT KATE BARKMAN, CLERK OF COURT ON 4/22/20. 4/23/20 ENTERED AND COPIES NOT MAILED TO UNREP AND E-MAILED TO PRO SE PLAINTIFF.(rf,) (Entered: 04/23/2020)
04/23/2020	<u>7</u>	ORDER THAT PLAINTIFFS REQUEST IS GRANTED. THE CLERK OF COURT SHALL REFER THIS MATTER TO THE PLAINTIFFS EMPLOYMENT PANEL FOR THE EASTERN DISTRICT OF PENNSYLVANIA FOR POSSIBLE APPOINTMENT OF COUNSEL. SIGNED BY HONORABLE GERALD J. PAPPERT ON 4/23/20. 4/23/20 ENTERED AND COPIES NOT MAILED TO UNREP AND E-MAILED TO PRO SE PLAINTIFF.(rf,) (Entered: 04/23/2020)
05/05/2020	<u>8</u>	ORDER THAT GREG H. GREUBEL IS APPOINTED TO REPRESENT PLAINTIFF DONNA R. HUDNELL IN THIS ACTION AS OUTLINED HEREIN. SIGNED BY HONORABLE GERALD J. PAPPERT ON 5/5/20. 5/6/20 ENTERED AND COPIES NOT MAILED TO UNREP AND E-MAILED.(rf,) (Entered: 05/06/2020)
05/06/2020	<u>9</u>	NOTICE of Appearance by GREG GREUBEL on behalf of DONNA R. HUDNELL with Certificate of Service(GREUBEL, GREG) (Entered: 05/06/2020)
05/27/2020	<u>10</u>	STIPULATION AND ORDER THAT PLAINTIFF MAY FILE AN AMENDED COMPLAINT IN THIS MATTER. SIGNED BY HONORABLE GERALD J. PAPPERT ON 5/27/20. 5/27/20 ENTERED AND COPIES NOT MAILED TO UNREP AND E-MAILED.(rf,) (Entered: 05/27/2020)
05/29/2020	<u>11</u>	AMENDED COMPLAINT against THOMAS JEFFERSON UNIVERSITY HOSPITAL, filed by DONNA R. HUDNELL. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Certificate of Service)(GREUBEL, GREG) (Entered: 05/29/2020)
06/01/2020	<u>12</u>	WAIVER OF SERVICE Returned Executed by DONNA R. HUDNELL. All Defendants. (GREUBEL, GREG) (Entered: 06/01/2020)
06/03/2020	<u>13</u>	NOTICE of Appearance by SIDNEY R. STEINBERG on behalf of THOMAS JEFFERSON UNIVERSITY HOSPITAL with Certificate of Service(STEINBERG, SIDNEY) (Entered: 06/03/2020)

06/03/2020	<u>14</u>	NOTICE of Appearance by DANIEL FREDERICK THORNTON on behalf of THOMAS JEFFERSON UNIVERSITY HOSPITAL with Certificate of Service(THORNTON, DANIEL) (Entered: 06/03/2020)
06/04/2020	<u>15</u>	Notice to plaintiff dated 6/4/2020 re: pursuant to the Standing Order – Attorney Panel for Pro Se Plaintiffs in Employment Cases, your case has been referred to Judge PAUL S. DIAMOND for early mediation. (E–mailed to counsel)(pr,) (Entered: 06/04/2020)
06/04/2020	<u>16</u>	STIPULATION AND ORDER THAT PLAINTIFF MAY FILE A SECOND AMENDED COMPLAINT IN THE ABOVE–CAPTIONED MATTER. SIGNED BY HONORABLE GERALD J. PAPPERT ON 6/4/20. 6/4/20 ENTERED & E–MAILED. (fdc) (Entered: 06/04/2020)
06/04/2020	<u>17</u>	AMENDED COMPLAINT against THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC., filed by DONNA R. HUDNELL. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Certificate of Service)(GREUBEL, GREG) Modified on 6/8/2020 (md,). (Entered: 06/04/2020)
07/27/2020		Document #6 regenerated on 7/27/20. (kw,) (Entered: 07/27/2020)
07/28/2020	<u>18</u>	MOTION TO DISMISS IN PART FOR FAILURE TO STATE A CLAIM <i>and for Lack of Subject–Matter Jurisdiction</i> filed by THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC. Brief and certificate of service.(STEINBERG, SIDNEY) Modified on 7/29/2020 (tjd). (Entered: 07/28/2020)
07/30/2020		DOCS # 8 & 10 REGENERATED ON 7/30/20 (rf,) (Entered: 07/30/2020)
08/10/2020	<u>19</u>	RESPONSE in Opposition re <u>18</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>and for Lack of Subject–Matter Jurisdiction</i> filed by DONNA R. HUDNELL. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Text of Proposed Order, # <u>3</u> Certificate of Service)(GREUBEL, GREG) (Entered: 08/10/2020)
08/17/2020	<u>20</u>	ORDER THAT DEFENDANT SHALL FILE A REPLY BRIEF IN FURTHER SUPPORT OF ITS MOTION TO DISMISS ON OR BEFORE 8/21/20. SIGNED BY HONORABLE GERALD J. PAPPERT ON 8/17/20. 8/17/20 ENTERED AND COPIES E–MAILED.(rf,) (Entered: 08/17/2020)
08/20/2020	<u>21</u>	REPLY to Response to Motion re <u>18</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>and for Lack of Subject–Matter Jurisdiction</i> , <i>Plaintiff's Second Amended Complaint</i> filed by THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC.. (STEINBERG, SIDNEY) (Entered: 08/20/2020)
08/27/2020	<u>22</u>	Disclosure Statement Form pursuant to FRCP 7.1 including Thomas Jefferson University with Certificate of Service by THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC..(STEINBERG, SIDNEY) (Entered: 08/27/2020)
09/25/2020	<u>23</u>	MEMORANDUM AND/OR OPINION. SIGNED BY HONORABLE GERALD J. PAPPERT ON 9/25/20. 9/25/20 ENTERED AND COPIES E–MAILED.(rf,) (Entered: 09/25/2020)
09/25/2020	<u>24</u>	MEMORANDUM AND ORDER THAT MOTION IS GRANTED IN PART AND DENEID IN PART AS OUTLINED HEREIN. PLAINTIFF MAY FILE A 3RD AMENDED COMPLAINT CONSISTENT WITH THIS ORDER AND ATTACHED MEMORANDUM ON OR BEFORE 11/6/20. SIGNED BY HONORABLE GERALD J. PAPPERT ON 9/25/20. 9/25/20 ENTERED AND COPIES E–MAILED.(rf,) (Entered: 09/25/2020)
09/25/2020		AMENDED PLEADINGS DUE BY 11/6/2020. (rf,) (Entered: 09/25/2020)
11/04/2020	<u>25</u>	AMENDED COMPLAINT against THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC., filed by DONNA R. HUDNELL, Jury Demand. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Certificate of Service)(GREUBEL, GREG) Modified on 11/5/2020 (md,). (Entered: 11/04/2020)
11/04/2020		DEMAND for Trial by Jury by DONNA R. HUDNELL. (md,) (Entered: 11/05/2020)
11/17/2020	<u>26</u>	STIPULATION AND ORDER THAT DEFENDANTS RESPONSE TO PLAINTIFFS THIRD AMENDED COMPLAINT IS DUE BY 11/25/20. SIGNED BY HONORABLE GERALD J. PAPPERT ON 11/17/20. 11/17/20 ENTERED AND

		COPIES E-MAILED.(rf,) (Entered: 11/17/2020)
11/23/2020	<u>27</u>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC..Brief and certificate of service. (Attachments: # <u>1</u> Text of Proposed Order)(STEINBERG, SIDNEY) (Entered: 11/23/2020)
12/07/2020	<u>28</u>	RESPONSE in Opposition re <u>27</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by DONNA R. HUDNELL. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Text of Proposed Order, # <u>3</u> Certificate of Service)(GREUBEL, GREG) (Entered: 12/07/2020)
12/14/2020	<u>29</u>	REPLY to Response to Motion re <u>27</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>with certificate of service</i> filed by THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC.. (STEINBERG, SIDNEY) (Entered: 12/14/2020)
01/07/2021	<u>30</u>	MEMORANDUM; ETC.. SIGNED BY HONORABLE GERALD J. PAPPERT ON 1/7/21. 1/7/21 ENTERED AND E-MAILED.(JL) (Entered: 01/07/2021)
01/07/2021	<u>31</u>	ORDER THAT DEFENDANT'S MOTION TO DISMISS THE THIRD AMENDED COMPLAINT IS DENIED; ETC.. SIGNED BY HONORABLE GERALD J. PAPPERT ON 1/7/21. 1/7/21 ENTERED AND E-MAILED.(JL) (Entered: 01/07/2021)
01/07/2021	<u>32</u>	MEMORANDUM AND/OR OPINION. SIGNED BY HONORABLE GERALD J. PAPPERT ON 1/7/21. 1/7/21 ENTERED AND COPIES E-MAILED.(kw,) (Entered: 01/07/2021)
01/07/2021	<u>33</u>	ORDER THAT DEFT'S MOTION TO DISMISS THE THIRD AMENDED COMPLAINT, (ECF NO. 27) IS DENIED.SIGNED BY HONORABLE GERALD J. PAPPERT ON 1/7/21. 1/7/21 ENTERED AND COPIES E-MAILED.(kw,) (Entered: 01/07/2021)
01/21/2021	<u>34</u>	STIPULATION AND ORDER OF COUNSEL THAT DEFENDANT'S TIME IN WHICH TO FILE AN ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT, RENDERING DEFENDANT'S RESPONSE DUE ON OR BEFORE 1/28/21; ETC.. SIGNED BY HONORABLE GERALD J. PAPPERT ON 1/21/21. 1/21/21 ENTERED AND E-MAILED.(JL) (Entered: 01/21/2021)
01/28/2021	<u>35</u>	<i>Defendant Thomas Jefferson University Hospital's Affirmative Defenses and ANSWER to <u>25</u> Amended Complaint with certificate of service</i> by THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC..(STEINBERG, SIDNEY) (Entered: 01/28/2021)
02/09/2021	<u>36</u>	ORDER THAT PRETRIAL CONFERENCE SET FOR 2/16/2021 12:00 PM. SIGNED BY HONORABLE GERALD J. PAPPERT ON 2/9/21. 2/9/21 ENTERED AND COPIES E-MAILED.(rf,) (Entered: 02/09/2021)
02/15/2021	<u>37</u>	NOTICE of Withdrawal of Appearance by DANIEL FREDERICK THORNTON on behalf of THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC.(THORNTON, DANIEL) (Entered: 02/15/2021)
02/16/2021	<u>38</u>	Minute Entry for proceedings held before HONORABLE GERALD J. PAPPERT Pretrial Conference held on 2/16/21. (rf,) (Entered: 02/16/2021)
02/17/2021	<u>39</u>	ORDER THAT MATTER IS REFERRED TO MAGISTRATE JUDGE HEY FOR SETTLEMENT; EXPERT DISCOVERY DUE BY 6/15/2021., MOTIONS DUE BY 6/29/2021., MOTION IN LIMINE DUE BY 8/17/2021., MOTION FOR SUMMARY JUDGMENT DUE BY 6/29/2021., FINAL PRETRIAL CONFERENCE SET FOR 8/31/2021 10:00 AM; PLAINTIFF PRETRIAL MEMO DUE BY 8/27/2021., DEFENDANT PRETRIAL MEMO DUE BY 8/27/2021., TRIAL DATE SET FOR 9/7/2021 09:30 AM. SIGNED BY HONORABLE GERALD J. PAPPERT ON 2/16/21. 2/17/21 ENTERED AND COPIES E-MAILED.(rf,) (Entered: 02/17/2021)
02/17/2021	<u>40</u>	NOTICE OF SETTLEMENT REFERRAL TO COUNSEL – MAGISTRATE JUDGE ELIZABETH T. HEY. 02/17/2021 ENTERED AND COPIES EMAILED. (miah,) (Entered: 02/17/2021)

02/22/2021	<u>41</u>	NOTICE of Appearance by DAVID E. RENNER on behalf of THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC. with Certificate of Service(RENNER, DAVID) (Entered: 02/22/2021)
05/05/2021	<u>42</u>	Minute Entry for proceedings held before HONORABLE GERALD J. PAPPERT Telephone Conference held on 5/3/21 (rf,) (Entered: 05/05/2021)
06/04/2021	<u>43</u>	Minute Entry for proceedings held before HONORABLE GERALD J. PAPPERT Telephone Conference held on 6/4/21 (rf,) (Entered: 06/04/2021)
06/04/2021	<u>44</u>	ORDER: AFTER A TELEPHONE CONFERENCE WITH ALL COUNSEL, (ECF 43), AND PURSUANT TO COUNSELS' MAY 19 LETTERS TO THE COURT, PLAINTIFF'S REQUEST FOR THE DOCUMENTS DEFENDANT USED TO CREATE 1491-1511 IS DENIED. SIGNED BY HONORABLE GERALD J. PAPPERT ON 6/4/21. 6/4/21 ENTERED AND COPIES E-MAILED.(kf,) (Entered: 06/04/2021)
06/22/2021	<u>45</u>	ORDER THAT MOTION FOR SUMMARY JUDGMENT DUE BY 7/7/2021, TO 7/28/21. SIGNED BY HONORABLE GERALD J. PAPPERT ON 6/22/21. 6/22/21 ENTERED AND COPIES E-MAILED.(rf,) (Entered: 06/22/2021)
07/07/2021	<u>46</u>	MOTION for Summary Judgment filed by THOMAS JEFFERSON UNIVERSITY HOSPITAL, THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC..Brief. (Attachments: # <u>1</u> Supplement Statement of Material Facts and Exhibits)(STEINBERG, SIDNEY) (Entered: 07/07/2021)
07/07/2021	<u>47</u>	MOTION for Partial Summary Judgment filed by DONNA R. HUDNELL.. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Supplement Statement of Undisputed Facts, # <u>3</u> Exhibit 1-5, # <u>4</u> Exhibit 6-13, # <u>5</u> Text of Proposed Order, # <u>6</u> Certificate of Service)(GREUBEL, GREG) (Entered: 07/07/2021)
07/21/2021	<u>48</u>	RESPONSE in Opposition re <u>47</u> MOTION for Partial Summary Judgment filed by THOMAS JEFFERSON UNIVERSITY HOSPITAL, THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC.. (STEINBERG, SIDNEY) (Entered: 07/21/2021)
07/21/2021	<u>49</u>	RESPONSE in Opposition re <u>47</u> MOTION for Partial Summary Judgment <i>Defendants' Response to Plaintiff's Statement of Undisputed Material Facts</i> filed by THOMAS JEFFERSON UNIVERSITY HOSPITAL, THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC.. (STEINBERG, SIDNEY) (Entered: 07/21/2021)
07/21/2021	<u>50</u>	RESPONSE in Opposition re <u>46</u> MOTION for Summary Judgment filed by DONNA R. HUDNELL. (Attachments: # <u>1</u> Supplement Response to Statement of Facts, # <u>2</u> Supplement Counter Statement of Facts, # <u>3</u> Exhibit 1-5, # <u>4</u> Exhibit 6-22, # <u>5</u> Memorandum, # <u>6</u> Text of Proposed Order, # <u>7</u> Certificate of Service)(GREUBEL, GREG) (Entered: 07/21/2021)
07/26/2021	<u>51</u>	ORDER THAT A TELEPHONIC SETTLEMENT STATUS CONFERENCE SET FOR 8/16/2021 09:00 AM. SIGNED BY MAGISTRATE JUDGE ELIZABETH T. HEY ON 7/26/21. 7/26/21 ENTERED AND COPIES E-MAILED.(rf,) (Entered: 07/26/2021)
07/26/2021	<u>52</u>	ORDER THAT THE DEADLINE FOR THE PARTIES TO SUBMIT THEIR REPLY BRIEFS IN FURTHER SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT IS HEREBY EXTENDED TO 8/4/2021. SIGNED BY HONORABLE GERALD J. PAPPERT ON 7/26/21. 7/27/21 ENTERED AND COPIES E-MAILED.(va,) (Entered: 07/27/2021)
07/28/2021	<u>53</u>	ORDER THAT SETTLEMENT CONFERENCE SET FOR 8/16/21 AT 09:00AM IS RESCHEDULED FOR 7/30/2021 09:00 AM. SIGNED BY MAGISTRATE JUDGE ELIZABETH T. HEY ON 7/28/21. 7/28/21 ENTERED AND COPIES E-MAILED.(rf,) (Entered: 07/28/2021)
08/02/2021	<u>54</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE ELIZABETH T. HEY Settlement/Status Conference held on 7/30/21. (rf,) (Entered: 08/02/2021)
08/02/2021	<u>55</u>	ORDER THAT SETTLEMENT CONFERENCE SET FOR 8/23/2021 09:30 AM. SIGNED BY MAGISTRATE JUDGE ELIZABETH T. HEY ON 8/2/21. 8/2/21 ENTERED AND COPIES E-MAILED.(rf,) (Entered: 08/02/2021)

08/02/2021	<u>56</u>	ORDER THAT MOTION HEARING SET FOR 8/26/21 AT 10:00 AM. SIGNED BY HONORABLE GERALD J. PAPPERT ON 8/2/21. 8/2/21 ENTERED AND COPIES E-MAILED.(rf,) (Entered: 08/02/2021)
08/04/2021	<u>57</u>	REPLY to Response to Motion re <u>46</u> MOTION for Summary Judgment filed by THOMAS JEFFERSON UNIVERSITY HOSPITAL, THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC.. (Attachments: # <u>1</u> Exhibit Exhibit "FF")(STEINBERG, SIDNEY) (Entered: 08/04/2021)



CAPTION

Mary Cease, Respondent
v.
Housing Authority of Indiana County, Petitioner

CASE INFORMATION

Initiating Document: Petition for Allowance of Appeal
Case Status: Active
Journal Number:
Case Category: Civil Case Type(s): Local Agency Appeal

CONSOLIDATED CASES

RELATED CASES

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 IFP Status:

SUPREME COURT INFORMATION

Appeal From:
 Appeal Filed Below:

Probable Jurisdiction Noted: Docketed Date: March 16, 2021
 Allocatur/Miscellaneous Granted: Allocatur/Miscellaneous Docket No.:
 Allocatur/Miscellaneous Grant Order:

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
03/12/2021	Petition for Allowance of Appeal Filed	90.25	03/16/2021	2021-SUP-W-000864	90.25

INTERMEDIATE APPELLATE COURT INFORMATION

Court Name: Commonwealth Docket Number: 519 CD 2019
 Date of Order: February 19, 2021 Rearg/Recon Disp Date:
 Rearg/Recon Disposition:
 Judge(s): McCullough, Patricia A.
 Wojcik, Michael H.
 Leadbetter, Bonnie Brigance
 Intermediate Appellate Court Action: Affirmed/Vacated/Remanded.
 Referring Court:

AGENCY/TRIAL COURT INFORMATION

Supreme Court of Pennsylvania



Allocatur Docket Sheet

Docket Number: 74 WAL 2021

Page 3 of 3

August 6, 2021

Court Below: Indiana County Court of Common Pleas
 County: Indiana Division: Indiana County Civil Division
 Date of Agency/Trial Court Order: April 10, 2019
 Docket Number: Docket No. 11894 CD 2018
 Judge(s): Martin, William J. OTN:
 Order Type: Order

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content/Description
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Record Remittal:

DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
March 12, 2021	Petition for Allowance of Appeal	Petitioner	Housing Authority of Indiana County
March 26, 2021	No Answer Letter to Petition for Allowance of Appeal	Respondent	Cease, Mary

CROSS COURT ACTIONS

Docket Number: 519 CD 2019