STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

John Doe #95

v.

State of New Hampshire, et al.

Case No. 217-2022-cv-00018

MOTION TO STRIKE LIEN WITH INCORPORATED MEMORANDUM OF LAW
(As applicable only to Case No. 217-2022-cv-00018)

NOW COMES Plaintiff John Doe #95, by and through counsel, Douglas, Leonard & Garvey, P.C., and respectfully submits the within Motion to Strike Lien with Incorporated Memorandum of Law, stating as follows in support thereof:

I. Introduction

The Court should strike the August 2, 2022, lien filed by John Doe #95's former counsel against the $1,500,000 maximum recovery that Mr. Doe obtained from the YDC Claims Administration and Settlement Fund (YDC Claims Fund) exclusively through the efforts of Douglas, Leonard & Garvey, P.C., because no basis for the lien exists, where Mr. Doe terminated former counsel's representation well before his YDC Claims Fund "proceeding" commenced.

Moreover, Mr. Doe's former counsel played no role in obtaining said recovery, where they refused to pursue relief from the YDC Claims Fund for Mr. Doe despite his repeated pleas to do so, treated him with blatant disrespect, and failed to communicate adequately with him—conduct which supported Mr. Doe's for-cause termination of their representation and which also violated the Rules of Professional Conduct.

Additionally, quantum meruit recovery is unavailable to former counsel because former counsel's representation of Mr. Doe conferred no benefit upon him and because former counsel—

tainted with inequitableness by their refusal to abide by Mr. Doe's wishes and by their otherwise inappropriate treatment of him—cannot recover the equitable remedy of quantum meruit because of the doctrine of unclean hands.

Mr. Doe submits his Affidavit in support of the within Motion. See Exhibit A.

II. Facts

Mr. Doe retained Attorney Cyrus (Rus) Rilee, of Rilee & Associates, PLLC, to represent him on April 26, 2021, when he signed a representation/fee agreement with Attorney Rilee. See Exhibit A, ¶ 1 (Affidavit of John Doe #95); Exhibit K (Mr. Doe's fee agreement with Attorney Rilee).

In or around May of 2021, Attorney Rilee connected Mr. Doe with a settlement funding company so that he could obtain a loan, or pre-settlement advance funding, by selling a portion of his future case recovery to this company. Exhibit A, ¶ 2.

The settlement funding company agreed to give Mr. Doe a "loan" or advance on his claim and the agreement was finalized when Attorney Rilee signed the "Acknowledgement of Authorization" section of the agreement. Id., ¶ 3.

After this time, Mr. Doe began receiving additional loans on a monthly basis from the same company. Id., ¶ 4.

Before Mr. Doe could receive these monthly loans, Attorney Rilee was required to sign the "Acknowledgement of Authorization" section of the agreement each month. He did so. Id., ¶ 5.

Like Mr. Doe, hundreds of claimants have, to date, borrowed millions of dollars at approximately 35.4% interest a year.

In January 2022, Attorney David Vicinanzo of Nixon Peabody, LLP, filed a Complaint and Demand for Jury Trial (Complaint) in Mr. Doe's case. Id., ¶ 6.

On February 21, 2022, Mr. Doe gave his written consent to a co-counsel arrangement that Attorney Rilee's office entered into with Nixon Peabody, where Mr. Doe agreed that Nixon Peabody could assist Attorney Rilee with Mr. Doe's representation. Id., ¶ 7. Attorney Rilee, Attorney Vicinanzo, and their respective firms are collectively referred to herein as "former counsel."

Throughout Attorney Rilee's representation, Mr. Doe had a very difficult time getting updates on his case and getting in touch with Attorney Rilee at all. Id., ¶ 8.

On the rare occasions when Mr. Doe was able to get in touch with Attorney Rilee and asked for updates on the status of his case, Attorney Rilee frequently told him that there were "no updates" and "nothing new." When Mr. Doe questioned how that could be on one occasion, Attorney Rilee said, "I'm your lawyer, I think I'd know." Id., ¶ 9.

It was very difficult for Mr. Doe to get in touch with Attorney Rilee. Attorney Rilee often did not answer the phone and frequently took a very long time to return phone calls. On one occasion, Mr. Doe confronted Attorney Rilee about this, only to have Attorney Rilee tell him, "I have a lot of fucking cases." Id., ¶ 10.

Although this was not the only occasion that Attorney Rilee snapped at Mr. Doe when he called to request a case status update, he thought that Attorney Rilee snapped simply due to being overwhelmed, so Mr. Doe decided to remain a client for the time being. Id., ¶ 11.

At some point, Mr. Doe learned that the State of New Hampshire was creating the YDC Claims Administration and Settlement Fund (YDC Claims Fund). Mr. Doe decided to opt into that process instead of pursuing his claims in court. Mr. Doe made this decision because, due to personal circumstances, it was in his best interest to put the case behind him and obtain money from his case sooner than would be possible by waiting for a jury trial. Id., ¶ 12.

When Mr. Doe told Attorney Rilee that Mr. Doe decided to file a claim with the YDC Claims Fund, he said to the effect of, "I don't think that's a good idea" and "I strongly advise you not to do that." Id., ¶ 13.

Mr. Doe told Attorney Rilee that because he "need[ed] his money now," Mr. Doe wanted Attorney Rilee to withdraw his case from court and file a claim for him in the YDC Claims Fund, because that path to relief was best for him. Id., ¶ 14.

In response, Attorney Rilee told Mr. Doe he would "have to wait a few years." Id., ¶ 15.

This conversation turned into Attorney Rilee and Mr. Doe screaming at each other. Id., ¶ 16.

It should be noted that Mr. Doe is right to avoid years of waiting. About a year ago, Judge Schulman said it could take 35 years for all YDC-related trials to be held, and there were only 500 plaintiffs in the master Meehan case at that time. Now, there are approximately 850 plaintiffs, and that number is likely to increase to approximately 1,000 plaintiffs. See *Order*, Meehan v. State of New Hampshire, et al., No. 217-2020-CV-00026 (June 2, 2023).

When Mr. Doe reiterated that he could not wait years to resolve his case and, instead wanted to resolve it through the YDC Claims Fund, Attorney Rilee said words to the effect of, "I'm not doing that, because it will fuck up the rest of the jury trials where I'll get the big money," and that if Mr. Doe opted into the YDC Claims Fund, Mr. Doe's action would cause the Attorney General to "lowball everyone else." Id., ¶ 17.

When Mr. Doe maintained that it was his decision to file a claim with the YDC Claims Fund, Attorney Rilee made comments, among other things, to the effect of: "What do you want him to do? Call the AG [Attorney General] and get you a couple hundred bucks so you can shut up about the money and then I fuck up my millions for all my other clients?" Id., ¶ 18.

Attorney Rilee would not listen to Mr. Doe about what was best for him and his case, insisting that Attorney Rilee knew what was best because Attorney Rilee "blew the doors off the YDC thing." Id., ¶ 19.

When Attorney Rilee continually stated that he would not withdraw Mr. Doe's case from court, nor file a claim for Mr. Doe with the YDC Claims Fund, Mr. Doe told Attorney Rilee that he was firing Attorney Rilee and would seek other counsel. Id., ¶ 20.

Attorney Rilee responded to the effect of, "if you fire me, good luck getting your money." Id., ¶ 21.

When Mr. Doe said that he would go to the Attorney General on his own to try to settle his case, Attorney Rilee responded to the effect of: "So they can throw $30,000 at you to get you out of their fucking face? You won't get the kind of money you'll get with me. I'm not gonna let a minnow slide through the net and fuck up a big case for me." Attorney Rilee then abruptly said he had calls coming in and ended the call. Id., ¶ 22.

Mr. Doe terminated his representation through Rilee & Associates and Nixon Peabody for several reasons, including that they: failed to communicate with him either timely or adequately about the status of his case; treated him disrespectfully and inappropriately on the occasions when they did communicate; and refused to help him accomplish his goals for his case, because they told him that his goals diverged from their financial interests and the financial interests of their other clients. Id., ¶ 23.

Mr. Doe sought new representation through undersigned counsel in June of 2022. See Exhibit M (Affidavit of Charles G. Douglas, III, Esquire).

Shortly thereafter, undersigned counsel requested Mr. Doe's file from former counsel.

Subsequently, undersigned counsel received a "Notice of Lien" filed by Mr. Doe's former counsel on August 2, 2022, wherein his former counsel sought "their attorneys' fees and costs pursuant to the terms of their contingency fee agreement with Plaintiff, John Doe #95," pursuant to RSA 311:13. See Exhibit B (Notice of Lien).

Former counsel's fee agreement sets a 40 percent contingent fee. However, RSA 21-M:11-a, XIV, bars any attorney representing a client in a claim against the YDC Claims Fund from recovering attorney's fees "in excess of 33 1/3 percent of the amount of the award."

Attorney Vicinanzo told John Doe #399 that:

> If I switched attorneys for my YDC case, I would have to pay Attorney Vicinanzo and Attorney Rilee their fee (which I understood to mean 40 %), that I would separately have to pay Douglas, Leonard & Garvey's firm their one-third fee, and that I would be left with the remainder (i.e., 26 & 2/3 %) of the compensation from my YDC case.

Exhibit L at ¶ 17 (Affidavit of John Doe #399).

Double fees are not allowed.

January 1, 2023, was the first day that claims could be filed with the YDC Claims Fund. See RSA 21-M:11-a, VII(b).

On January 1, 2023, undersigned counsel filed Mr. Doe's claim with the YDC Claims Fund and Mr. Doe's claim was received by the fund on January 3, 2023.

Mr. Doe's former counsel played no role whatsoever in said filing.

In early May of 2023, undersigned counsel obtained for Mr. Doe $1,500,000 in compensation from the YDC Claims Fund, which is the maximum compensation recoverable from the YDC Claims Fund under law.

The efforts of undersigned counsel, and of undersigned counsel alone, led to the $1,500,000 recovery for Mr. Doe. Mr. Doe's former counsel did none of the work achieving the result.

Mr. Doe was pleased with undersigned counsel's representation, because we helped him accomplish his goals by obtaining a settlement for him through the YDC Claims Fund, put his best interests first, and treated him with respect, kindness, and support. See Exhibit A, ¶ 24.

Because of the way that Rilee & Associates and Nixon Peabody treated Mr. Doe, he does not want them to receive any fees from the settlement of his case, particularly where Mr. Doe asked them to settle his case for him through the YDC Claims Fund when he was still their client, and they refused. Id., ¶ 25.

III. Argument

The Court should strike former counsel's lien against the recovery Mr. Doe obtained from the YDC Claims Fund, where no lien could attach to the recovery obtained through the YDC Claims Fund proceedings pursuant to RSA 311:3 as interpreted by the New Hampshire Supreme Court, since Mr. Doe terminated former counsel's representation well before his YDC Claims Fund "proceeding" commenced and, in fact, before the YDC Claims Fund began accepting filed claims. As such, no lien exists under RSA 311:13. Further, because Attorneys Rilee and Vicinanzo were terminated by Mr. Doe for cause and for professional misconduct, and because their representation of Mr. Doe conferred no benefit upon him, they are not entitled to any fee, quantum meruit or otherwise, for any legal services they may have rendered.

A. Attorneys Rilee and Vicinanzo Have Not, and Cannot, Meet the Statutory Grounds for a Lien Under RSA 311:13 Because They Never Entered an Appearance in the YDC Claims Fund Proceeding.

Mr. Doe's former counsel filed a "Notice of Lien" on August 2, 2022, seeking "their attorneys' fees and costs pursuant to the terms of their contingency fee agreement with Plaintiff, John Doe #95," pursuant to RSA 311:13. See Exhibit B (Notice of Lien). Because RSA 311:13

does not provide Attorneys Rilee and Vicinanzo a basis for the fees and costs they seek, the lien should be stricken.

RSA 311:13, in relevant part, provides as follows:

> From the commencement of an action, bill in equity or other proceeding in any court, the filing of a counterclaim or plea in set-off or recoupment, or appearance in any proceeding before any state or federal department, board, or commission, the attorney who appears for a client in such proceeding shall have a lien for reasonable fees and expenses upon the client's cause of action, upon the judgment decree or other order in the client's favor entered or made in such proceeding, and upon the proceeds derived therefrom.

The New Hampshire Supreme Court has confirmed the meaning of the statute's plain text: "any attorney's lien under the statute attaches no earlier than the date of entry of the appearance of counsel" in the proceeding to which the lien relates. Peterson v. John J. Reilly, Inc., 105 N.H. 340, 355 (1964) (emphasis added).

Attorneys Rilee and Vicinanzo have no statutory lien on Mr. Doe's recovery from the YDC Claims Fund, because they never "commence[d]" a "proceeding" in the YDC Claims Fund for Mr. Doe, nor did they ever appear in the YDC Claims Fund for Mr. Doe. In fact, they refused to do so, and they were therefore terminated by Mr. Doe in or near June of 2022. See Exhibit A, ¶¶ 20-24. Attorneys Rilee and Vicinanzo filed the August, 2022, lien *under the case number for Mr. Doe's then-pending State court lawsuit*, from which no recovery was ever made, as Mr. Doe opted to abandon that State court lawsuit and pursue relief in an entirely different proceeding offered through the YDC Claims Fund. Moreover, the August 2022 lien could not – under the terms of RSA 311:13 – attach to the YDC Claims Fund proceedings which resulted in recovery to Mr. Doe, because no proceedings could be (nor were) commenced in the YDC Claims Fund until January 1, 2023. See RSA 21-M:11-a, VII(b).

Accordingly, because RSA 311:13 does not provide Attorneys Rilee and Vicinanzo a statutory basis for the fees and costs they seek, the lien should be stricken.

B. Mr. Doe Terminated Attorneys Rilee and Vicinanzo for Acts and Omissions Violative of New Hampshire Rules of Professional Conduct 1.2 (a), 1.3, 1.4, 1.7 (a) (2) and 3.2, Disqualifying Them from any Entitlement to Attorney's Fees.

As the New Hampshire Supreme Court has specifically held, "relevant to [a discharged attorney's] entitlement to fees" is the issue of whether the client fired the attorney with or without "cause." Garod v. Steiner Law Office, 170 N.H. 1, 9 (2017). An "attorney discharged for cause…has no right to payment of fees." Id. (quoting First Nat. Bank of Cincinnati v. Pepper, 454 F.2d 626, 633 (2d Cir. 1972)) ("An attorney discharged for cause or guilty of professional misconduct in the handling of his client's affairs has no right to payment of fees."). Similarly, an "attorney discharged or removed 'for professional misconduct in the handling of his client's affairs' has no right to assert a statutory attorney's lien." Garod, 170 N.H. at 9 (quotations omitted).

Mr. Doe terminated Attorneys Rilee and Vicinanzo for cause, and for acts and omissions constituting professional misconduct, disqualifying Mr. Doe's former counsel from recovering any fees. In particular, the acts and omissions of Attorneys Rilee and Vicinanzo violated New Hampshire Rules of Professional Conduct 1.2 (a), 1.3, 1.4, 1.7 (a)(2), and 3.2.

Rule 1.2 (a)

Mr. Doe discharged former counsel for violating the Rule 1.2 (a) requirement that "a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." Mr. Doe's objective of representation was to obtain from the YDC Claims Fund prompt redress for the abuse he suffered. Mr. Doe directed former counsel to pursue a claim on his behalf from

the YDC Claims Fund. Former counsel defied Mr. Doe's directives by refusing to abide by his decision to obtain relief from the YDC Claims Fund. Former counsel thereby violated Rule 1.2 (a).

Rules 1.3 and 3.2

Mr. Doe discharged former counsel for violating the Rule 1.3 mandate that they act with reasonable promptness in representing him, as well as the Rule 3.2 mandate that they make reasonable efforts to expediate litigation consistent with his interests. Mr. Doe advised Attorney Rilee that he needed money promptly, and therefore wished to pursue relief from the YDC Claims Fund. Attorney Rilee responded that Mr. Doe would "have to wait a few years." Former counsel's insistence that Mr. Doe wait years, rather than pursue an expeditious remedy available to him in the coming months, violated Rules 1.3 and 3.2.

Rule 1.4

Mr. Doe discharged former counsel for violating the Rule 1.4 mandate that they reasonably consult with him about the means to accomplish his objectives, that they keep him reasonably informed about the status of his matter, and that they promptly comply with reasonable requests for information. Rule 1.4 requires that the lawyer allow the client "to participate intelligently in decisions concerning the objectives of the representation **and the means by which they are to be pursued**, to the extent the client is willing and able to do so." ABA Cmt. 5 to Rule 1.4 (emphasis supplied). Mr. Doe was willing and able to consult with former counsel regarding the decision as to the means through which to obtain redress for the abuse he suffered, expressing his wish to obtain expeditious relief through the YDC Claims Fund rather than wait years for the uncertain result of a jury trial. Former counsel rejected Mr. Doe's efforts to participate in the decision, thereby violating their Rule 1.4 (a)(2) obligations to Mr. Doe.

Former counsel further violated Rules 1.4 (a) (3) and (4) by failing to respond timely to Mr. Doe's requests for information and failing to return his phone calls with reasonable promptness, only to tell him, when Mr. Doe finally reached former counsel, that the lawyer "had a lot of fucking cases."

Rule 1.7 (a) (2)

Mr. Doe discharged former counsel because of former counsel's concurrent conflicts of interest violative of Rule 1.7 (a) (2). Former counsel refused to file a claim for Mr. Doe with the YDC Claims Fund because: a.) doing so would "fuck up the rest of the jury trials" where the attorneys could "get the big money"; b.) doing so would purportedly cause the Attorney General to "lowball[1] everyone else,"; and c.) doing so would "fuck up my millions for all my other clients." "I'm not gonna let a minnow slide through the net and fuck up a big case for me!" Attorney Rilee exclaimed to Mr. Doe. Former counsel's statements revealed to Mr. Doe that their concurrent representation of other clients materially limited former counsel's responsibilities to Mr. Doe, violating Rule 1.7 (a)(2).

The Court should find that former counsel's multiple violations of the New Hampshire Rules of Professional Conduct in representing Mr. Doe led to their discharge and therefore bar them from recovering any attorney's fees.

C. Former Counsel Have No Entitlement to Quantum Meruit Because Their Representation Conferred No Benefit on Mr. Doe, and the Doctrine of Unclean Hands Bars Former Counsel from Equitable Relief.

Again, Mr. Doe maintains, as detailed above, that he terminated Attorneys Rilee and Vicinanzo for cause, thereby entitling them to no fee from his YDC Claims Fund recovery that

[1] The "lowball" narrative that Attorneys Rilee and Vicinanzo wield against their clients is supported by another former client, who also provided an Affidavit detailing the reasons that he terminated his representation with Attorneys Rilee and Vicinanzo. See Exhibit L attached hereto.

undersigned counsel achieved. That aside, any quantum meruit claim that Attorneys Rilee and Vicinanzo might pursue fails both because their representation of Mr. Doe conferred no benefit upon him and because the doctrine of unclean hands renders unavailable to former counsel the equitable remedy of quantum meruit.

"Under a claim for quantum meruit, attorneys who are discharged ***without*** cause may recover the fair and reasonable value of their services." Adkin Plumbing v. Harwell, 135 N.H. 465, 467 (1992). The discharged attorney "bear[s] the burden of establishing the reasonable value of his services, which...is to be measured by the benefit conferred upon the client — an amount that may or may not be commensurate with the time or effort expended by the" discharged attorney and, of course, relevant to the discharged attorney's "entitlement to fees will be the issue of whether he was...discharged *without* cause." Garod, 170 N.H. at 9 (emphasis added).

Although Mr. Doe, through counsel, has asked Attorneys Rilee and Vicinanzo to produce their time and expense records several times in order to assess whether the "benefit conferred" upon him by their services, if any, as described in those records is "commensurate with the time or effort [they] expended," former counsel have failed to provide such records. See Exhibit C.

In any event, no benefit was conferred upon Mr. Doe through the representation he received from Attorneys Rilee and Vicinanzo, particularly where his former counsel refused to file a Claim with the YDC Claims Fund for Mr. Doe. More specifically, and as Mr. Doe's Affidavit states:

> **They refused to help me accomplish my goals for my case, because they told me that my goals would disrupt their financial interests and the financial interests of their other clients**.
>
> I sought new representation through Douglas, Leonard & Garvey, P.C. **I am pleased with the way that Douglas, Leonard & Garvey handled my case, because they helped me accomplish my goals for my case** by obtaining a settlement for me through the YDC Claims Fund, they always put my best interests first, and they treated me with respect, kindness, and support.

> **Because of the way that Rilee & Associates and Nixon Peabody treated me, I do not want them to receive any fees from the settlement of my case. I asked them to settle my case for me through the YDC Claims Fund when I was still their client, and they refused**. It is wrong for Rilee & Associates and Nixon Peabody to seek any money from the settlement that Douglas, Leonard & Garvey obtained for me, after Rilee & Associates and Nixon Peabody refused to pursue that settlement on my behalf.

See Exhibit A at ¶¶ 23-25 (emphasis added). Thus, it is plain that Attorneys Rilee and Vicinanzo, through their representation of Mr. Doe, conferred no benefit upon him.

In an August 2, 2022, letter to undersigned counsel, Attorneys Rilee and Vicinanzo cobbled together an asserted benefit they purportedly conferred upon Mr. Doe by stating as follows:

> As you are aware, RSA 21-M:11-a, VII(d) provides that the statute constitutes 'the state's offer to resolve completely and finally all of the former YDC residents' claims.' In addition, Attorney General Formella, in a filing with the court, has acknowledged that the statute is the result of extensive discussions between the state and Plaintiff's counsel to resolve civil claims through 'creation of a claims matrix,' a waiver of legal defenses by the State, and creation of a settlement fund far in excess of the Attorney General's statutory settlement authority. It is incontrovertible that we were the ONLY attorneys involved in that negotiation with the State.
>
> ***
>
> [W]e assert and intent to vigorously pursue our lien for attorneys' fees and costs incurred in the investigation/litigation of your client's case to date, the negotiation/debate of the terms of RSA 21-M:11-a, and the establishment of the statutory claims process set forth in RSA 21-M:11-a, all of which enure directly to the benefit of you and your client.

See Exhibit B (internal citations omitted).

First, although the statute states that it "constitutes the state's offer to resolve completely and finally all of the former YDC resident's claims through the claims process," it is "**by filing a claim** [that] the claimant agrees that he or she will participate in the claims process." RSA 21-M:11-a, VII(d). Mr. Doe's former counsel never filed a Claim on his behalf and, in fact, affirmatively refused to do so. See Exhibit A. Moreover, the mere filing of a Claim does not result

in automatic compensation. Undersigned counsel, among other things, dug through millions of State-produced documents to find records supporting Mr. Doe's claim, leading to his receipt of compensation.

Second, former counsel is delusional in claiming credit for the Legislature's creation of a statute signed into law by Governor Sununu. Although many stakeholders and stakeholder representatives may have given input while RSA 21-M:11-a was drafted, debated and passed into law, only the State's elected officials had the authority to make that happen, not Attorneys Rilee and Vicinanzo. Attorneys Rilee and Vicinanzo seemingly recognized that in correspondence to the State. See Exhibit H.

Rendering former counsel's position even more indefensible, Attorneys Rilee and Vicinanzo now attempt to claim credit for the creation of the very YDC Claims Fund that they not only sought to block Mr. Doe from benefiting from, but have publicly denounced in countless public statements.

For example, Attorney Vicinanzo told the Senate Judiciary Committee in early April of 2022 that the YDC Claims Fund, then still a proposed bill (HB 1677), was not "victim friendly," that the legislation had not "come far enough," and that he will advise his clients to pursue litigation instead of the claims process. See Exhibits D and E. Additionally, in a joint letter to the Attorney General from Attorneys Rilee and Vicinanzo, the two stated that the proposed caps for the claims process were "insultingly low," and that virtually all of their clients would (presumably based on their advice and public comment) opt out of the process. See Exhibit F.

In a June, 2022, pleading filed by the State and Attorney General Formella, the State told the Court that:

> The State has worked tirelessly in the last several weeks to stand up the operations of this Fund and invited cooperation from Plaintiffs' counsel, but counsel have refused to meaningfully engage.
>
> It appears that Plaintiffs' counsel are attempting to dissuade victims from participating in an alternative dispute resolution mechanism. If Plaintiffs' counsel sincerely believe that litigation is still the better option for their clients, they can pursue that option and the State will defend those cases accordingly.

See Exhibit G. By July of 2022, Attorneys Rilee and Vicinanzo admitted that their proposals were disregarded and that their discussions with the State were fruitless:

> As a preliminary matter, we submit that the proposed Claims Process is unsound from the outset because you have disregarded the proposals and suggestions of the abuse survivors from the very beginning. Our largely fruitless discussions relating to HB 1677, and your "sound bites for the press" dismissal of our earlier comments, give us little hope that you will meaningfully address the fundamental flaws that are baked into the AG's proposed processes, guidelines, and forms. The survivors believe that this back-and-forth is window-dressing regarding the AG's statutory obligation to engage in negotiations.

See Exhibit H at ¶ 2 (emphasis added). In an emailed statement to the *Union Leader*, Attorney Vicinanzo said that the Fund process was "not a product of negotiation with the victims." See Exhibit I. In response, the Attorney General said:

> We reached out repeatedly to Nixon Peabody and Rilee during the first phase of drafting the Claims Process and received nothing constructive in response. During this second phase, we chose instead to work very closely with the other claimants' counsel who were willing to engage with us constructively, and the Claims Process is better for it, as demonstrated by the support of those counsel and the Committee's approval of the revised process today.

See Exhibit J.

Based on the foregoing, Attorneys Rilee and Vicinanzo cannot conceivably claim entitlement to quantum meruit recovery from Mr. Doe, because their representation of Mr. Doe conferred no benefit upon him. To the extent Attorneys Rilee and Vicinanzo claim that the benefit their representation conferred upon Mr. Doe was the creation of the statutory administrative claims process itself, that claim does not pass the straight-face test.

Moreover, the doctrine of unclean hands bars former counsel from any quantum meruit recovery from Mr. Doe's settlement. "Quantum meruit is a restitutionary remedy…." R.J. Berke & Co., Inc. v. J.P. Griffin, Inc., 116 N.H. 760, 764 (1976). Restitution sounds in equity. Iacomini v. Liberty Mut. Ins. Co., 127 N.H. 73, 77-78 (1985). "The unclean hands doctrine…bars equitable relief" to a party "tainted with inequitableness or bad faith." Hersey v. WPB Partners, LLC, 2014 WL 575304 at *1 (D.N.H. Feb. 11, 2014). Prior counsel are tainted with inequitableness by their failure to abide by Mr. Doe's wishes and their otherwise inappropriate treatment of him as set forth herein. They are thus barred from any quantum meruit recovery.

IV. Conclusion

The Court has three (3) alternative, independent grounds upon which to strike the lien filed by Attorneys Rilee and Vicinanzo against Mr. Doe's recovery from the YDC Claims Fund.

First, the Court should strike the lien because RSA 311:13 does not authorize it, given that Mr. Doe terminated former counsel's representation well before his YDC Claims Fund "proceeding" commenced and, in fact, before the YDC Claims Fund even began accepting filed claims.

Second, the Court should strike the lien because Mr. Doe terminated Attorneys Rilee and Vicinanzo for cause.

Third, the Court should strike the lien because the representation that Mr. Doe received from Attorneys Rilee and Vicinanzo conferred no benefit upon him. Moreover, the doctrine of unclean hands bars prior counsel from obtaining the equitable relief of quantum meruit.

For the foregoing reasons, Attorneys Rilee and Vicinanzo are not entitled to any portion of Mr. Doe's recovery from the YDC Claims Fund, nor are they otherwise entitled to any payment of fees or expenses from Mr. Doe or undersigned counsel. The lien should be stricken.

WHEREFORE, John Doe #95 prays that this Honorable Court:

A. Strike the purported lien filed by Attorneys Rilee and Vicinanzo; and

B. Grant such other and further relief as this Honorable Court deems just and equitable.

Respectfully submitted,
JOHN DOE #95
By his attorneys,
DOUGLAS, LEONARD & GARVEY, P.C.

Dated: June 7, 2023

By: /s/ Charles G. Douglas, III
Charles G. Douglas, III, NH Bar #669
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Concord, NH 03301
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically served through ECF to all counsel of record on this date.

/s/ Charles G. Douglas, III
Charles G. Douglas, III

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

John Doe #95

v.

State of New Hampshire, et al.

Case No. 217-2022-CV-00018

EXHIBIT LIST FOR MOTION TO STRIKE LIEN

A. Affidavit of John Doe #95, 5/15/23

B. Letter from Rilee and Vicinanzo to Douglas with Notice of Lien, 8/2/22

C. Email from Douglas to Rilee re 8/2/22 letter, 8/10/22
Letter from Douglas to Vicinanzo, 11/3/22
Letter from Douglas to Rilee requesting time and expenses, 3/10/23

D. Victims' lawyer says $100M fund falls short, *Union Leader*, 4/8/22

E. Lawyer representing hundreds criticizes state's plan to settle their YDC abuse claims, *New Hampshire Bulletin*, 5/2/22

F. Lawyers for alleged Youth Development Center victims blast settlement plans, *WMUR-TV*, 6/23/22

G. State's Partial Objection to Plaintiffs' Motion to Lift Stay, 6/24/22

H. Letter from Rilee and Vicinanzo to Attorney General Formella, 7/25/22

I. *Union Leader* online, 10/3/22

J. Statement in response by the Attorney General's Office, *WMUR-TV*, 10/3/22

K. Rilee Fee Agreement, 4/26/21

L. Affidavit of John Doe #399, 5/20/23

M. Affidavit of Charles G. Douglas, III, Esq., 5/25/23

EXHIBIT A

Affidavit of [redacted] [John Doe # 95]

I, [redacted], state as follows under oath:

1. I retained Attorney Cyrus (Rus) Rilee, of Rilee & Associates, PLLC, to represent me on April 26, 2021, when I signed a representation / fee agreement with him.

2. In or around May of 2021, Attorney Rilee connected me with a settlement funding company so that I could obtain a loan, or pre-settlement advance funding, by selling a portion of my future case recovery to this company.

3. The settlement funding company agreed to give me a loan, and the loan agreement was finalized when Attorney Rilee signed the "Acknowledgement of Authorization" section of the agreement.

4. After this time, I began receiving additional loans on a monthly basis from the same company.

5. Before I could receive these monthly loans, Attorney Rilee was required to sign the "Acknowledgement of Authorization" section of the agreement each month. He did so.

6. In January 2022, Attorney David Vicinanzo of Nixon Peabody, LLP, filed a Complaint and Demand for Jury Trial (Complaint) in my case.

7. On February 21, 2022, I gave my written consent to a co-counsel arrangement that Attorney Rilee's office entered into with Nixon Peabody, where I agreed that Nixon Peabody could assist Attorney Rilee with his representation of me.

8. Throughout Attorney Rilee's representation of me, I had a very difficult time getting updates on my case and getting in touch with him at all.

9. On the rare occasions when I was able to get in touch with him and I asked for updates on the status of my case, he frequently told me that there were "no updates" and "nothing new." When I questioned how that could be on one occasion, he said, "I'm your lawyer, I think I'd know."

10. It was very difficult to get in touch with Attorney Rilee. He often did not answer the phone and frequently took a very long time to return phone calls. On one occasion, I confronted Attorney Rilee about this, and he replied, "I have a lot of fucking cases."

11. Although this was not the only occasion that Attorney Rilee snapped at me when I called to request a case status update, I thought he snapped at me simply because he was overwhelmed, so I decided to remain a client for the time being.

12. At some point, I learned that the State of New Hampshire was creating the YDC Claims Administration and Settlement Fund (YDC Claims Fund), I decided to opt into that process instead of pursuing my claims in court. I made this decision because, due to personal circumstances, it was in my best interest to put the case behind me and obtain money from my case sooner than would be possible by waiting for a jury trial.

13. When I told Attorney Rilee that I decided to file a claim with the YDC Claims Fund, he said to the effect of, "I don't think that's a good idea" and "I strongly advise you not to do that."

14. I told Attorney Rilee that because "I need my money now," I wanted him to, as my lawyer, withdraw my case from court and file a claim for me in the YDC Claims Fund, because that path to relief was best for me.

15. In response, Attorney Rilee told me that I would "have to wait a few years."

16. This conversation turned into Attorney Rilee and I screaming at each other.

17. When I reiterated that I could not wait years to resolve my case and, instead wanted to resolve it through the YDC Claims Fund, he said to the effect of, "I'm not doing that, because it will fuck up the rest of the jury trials where I'll get the big money," and if I opted into the YDC Claims Fund, that would cause the Attorney General to "low ball everyone else."

18. When I maintained that it was my decision to file a claim with the YDC Claims Fund, Attorney Rilee said, among other things, to the effect of: "What do you want me to do? Call the AG [Attorney General] and get you a couple hundred bucks so you can shut up about the money and then I fuck up my millions for all my other clients?"

19. Attorney Rilee would not listen to me about what was best for me and my case, and he insisted that he knew what was best because he "blew the doors off the YDC thing."

20. When Attorney Rilee continually stated that he would not withdraw my case from court and file a claim with the YDC Claims Fund for me, I told him that I was firing him and would seek other counsel.

21. He responded to the effect of, "if you fire me, good luck getting your money."

22. When I said that I would go to the Attorney General on my own to try and settle my case, Attorney Rilee responded to the effect of: "So they can throw $30,000 at you to get you out of their fucking face? You won't get the kind of money you'll get with me. I'm not gonna let a minnow slide through the net and fuck up a big case for me." Attorney Rilee then abruptly said he had calls coming in and ended the call.

23. I terminated my representation through Rilee & Associates and Nixon Peabody for several reasons, including that they: did not communicate with me frequently or thoroughly

enough about the status of my case; on they occasions that we did communicate, they were disrespectful and inappropriate; and they refused to help me accomplish my goals for my case, because they told me that my goals would disrupt their financial interests and the financial interests of their other clients.

24. I sought new representation through Douglas, Leonard & Garvey, P.C. I am pleased with the way that Douglas, Leonard & Garvey handled my case, because they helped me accomplish my goals for my case by obtaining a settlement for me through the YDC Claims Fund, they always put my best interests first, and they treated me with respect, kindness, and support.

25. Because of the way that Rilee & Associates and Nixon Peabody treated me, I do not want them to receive any fees from the settlement of my case. I asked them to settle my case for me through the YDC Claims Fund when I was still their client, and they refused. It is wrong for Rilee & Associates and Nixon Peabody to seek any money from the settlement that Douglas, Leonard & Garvey obtained for me, after Rilee & Associates and Nixon Peabody refused to pursue that settlement on my behalf.

[remainder of page intentionally left blank]

FURTHER AFFIANT SAYETH NOT.

Date: 5.15.25

STATE OF NEW HAMPSHIRE
COOS COUNTY

On this 15 day of May 2023, personally appeared before me and gave solemn oath that the foregoing is true and accurate to the best of his knowledge and belief.

Before me,

KELLY M. LAPERLE NOTARY PUBLIC MY COMMISSION EXPIRES 11/22/2026 STATE OF NEW HAMPSHIRE

~~Justice of the Peace~~ / Notary Public
My Commission Expires: 11/22/2026

EXHIBIT B

NIXON
PEABODY

Nixon Peabody LLP
900 Elm Street
Manchester, NH 03101-2031

Attorneys at Law
nixonpeabody.com
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David A. Vicinanzo
Partner

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RILEE & ASSOCIATES PLLC
ATTORNEYS AT LAW

CYRUS F. RILEE, II
LAURIE B. RILEE*
*ALSO ADMITTED IN ME & CA

August 2, 2022

BY HIGHTAIL/SFT

Charles G. Douglas, III, Esq.
Douglas Leonard & Garvey
14 South Street, Suite 5
Concord, NH 03301

RE: John Doe #95 v. New Hampshire Department of Health & Human Servs., et al
Case No. 217-2022-CV-00018

Dear Attorney Douglas:

You have notified us that has terminated our representation and you are taking over the case. You have requested a complete copy of our file. Enclosed please find a complete copy of the documents you have requested. If you believe you are missing any documents, please let us know.

In addition, enclosed please find a copy of our Notice of Lien filed today with the Merrimack County Superior Court, providing notice to you, your client, the defendants and the Attorney General of our lien for attorneys' fees and costs.

As you are aware, RSA 21-M:11-a, VII(d) provides that the statute constitutes "the state's offer to resolve completely and finally all of the former YDC resident's claims." In addition, Attorney General Formella, in a filing with the court, has acknowledged that the statute is the result of extensive discussions between the state and Plaintiff's counsel to resolve civil claims through "creation of a 'claims matrix,' a waiver of legal defenses by the State, and creation of a settlement fund far in excess of the Attorney General's statutory settlement authority." Partial Obj. to Pls.' Mot. To Lift Stay, ¶¶ 2, 4, Meehan et al. v. N.H. Dep't of Health & Human Servs., et al., 217-2020-CV-00026 (June 24, 2022). It is incontrovertible that we were the ONLY attorneys involved in that negotiation with the state.

New Hampshire law contemplates and provides for attorneys' fees liens for services rendered. First, RSA 311:13 establishes a statutory lien for attorneys' fees and costs based on the time and

expense expended on any given case. Moreover, contractually, our standard fee agreement executed by your client on April 26, 2021 and subsequent consent executed by your client on February 21, 2022 establish a contractual lien for attorneys' fees and costs (as I'm sure is standard in your firm's contingent fee agreements). In light of the foregoing, we assert and intend to vigorously pursue our lien for attorneys' fees and costs incurred in the investigation/litigation of your client's case to date, the negotiation/debate of the terms of RSA 21-M:11-a, and the establishment of the statutory claims process set forth in RSA 21-M:11-a, all of which enure directly to the benefit of you and your client.

We wish you and the very best of luck in your pursuit of justice, and if there is anything we can do to help, please let us know.

Sincerely,

/s/ Cyrus F. Rilee, II, Esq.

Cyrus F. Rilee, II, Esq.
RILEE & ASSOCIATES, P.L.L.C.

/s/ David A. Vicinanzo

David A. Vicinanzo, Esq.
NIXON PEABODY LLP

Enclosures

STATE OF NEW HAMPSHIRE

MERRIMACK, *ss.* SUPERIOR COURT

CASE NO. 217-2022-CV-00018

John Doe #95

v.

New Hampshire Department of Health & Human Servs., *et al.*

NOTICE OF LIEN FOR ATTORNEYS' FEES AND COSTS PURSUANT TO RSA 311:3

NOW COME Attorneys Cyrus F. Rilee, III of Rilee & Associates, P.L.L.C. and David A. Vicinanzo of Nixon Peabody LLP and, pursuant to RSA 311:13, respectfully notify this Honorable Court of their lien for attorneys' fees and costs pursuant to the terms of their contingency fee agreement with Plaintiff, John Doe #95.

Dated: August 2, 2022

Respectfully submitted,

RILEE & ASSOCIATES, P.L.L.C.

/s/ Cyrus F. Rilee, III
Cyrus F. Rilee, III, Esq. (Bar No. 15881)
264 South River Road
Bedford, NH 03110
T: 603.232.8234
crilee@rileelaw.com

NIXON PEABODY LLP

/s/ David A. Vicinanzo
David A. Vicinanzo, Esq. (Bar No. 9403)
900 Elm Street, 14th Floor
Manchester, NH 03101
T: 603-628-4000
dvicinanzo@nixonpeabody.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Notice of Lien for Attorneys' Fees and Costs Pursuant to RSA 311:13* was served via the Court's e-filing system on all parties of record on August 2, 2022.

/s/ David A. Vicinanzo

EXHIBIT C

Chuck Douglas

From: Chuck Douglas
Sent: Wednesday, August 10, 2022 4:32 PM
To: Vicinanzo, David
Subject: August 2 letter
Attachments: nixon peabody ltr 080222.pdf

Dear Dave,

Your fourth paragraph asserts a lien for time and expenses, so please produce records of each of those. Thank you.

Sincerely,
Charles G. Douglas, III, Esq.
Douglas, Leonard & Garvey, P.C.
14 South Street, Suite 5
Concord, NH 03301
(603) 224-1988
Fax: (603) 229-1988
chuck@nhlawoffice.com

DL&G DOUGLAS, LEONARD & GARVEY, P.C.

ATTORNEYS

Charles G. Douglas, III*
C. Kevin Leonard
Carolyn S. Garvey
Benjamin T. King**
Megan E. Douglass
Samantha J. Heuring

* also admitted in MA
** also admitted in ME

14 SOUTH STREET, SUITE 5
CONCORD, NEW HAMPSHIRE 03301

Telephone: 603-224-1988
Facsimile: 603-229-1988
Email: mail@nhlawoffice.com
www.nhlawoffice.com

November 3, 2022

David A. Vicinanzo, Esq.
Nixon Peabody
900 Elm Street
Manchester, NH 03101

Dear Dave:

On August 10, I emailed you to obtain the time and expenses for the prior representation of This and others have also been requested, but I have still not received the records. Do I need to get the ADO involved?

Sincerely,

Charles G. Douglas, III

DL&G DOUGLAS, LEONARD & GARVEY, P.C.

ATTORNEYS

Charles G. Douglas, III*
C. Kevin Leonard
Carolyn S. Garvey
Benjamin T. King**
Megan E. Douglass
Samantha J. Heuring

* also admitted in MA
** also admitted in ME

14 SOUTH STREET, SUITE 5
CONCORD, NEW HAMPSHIRE 03301

Telephone: 603-224-1988
Facsimile: 603-229-1988
Email: mail@nhlawoffice.com
www.nhlawoffice.com

March 10, 2023

Rus Rilee, Esq.
Rilee & Associates, PLLC
264 South River Road
Bedford, NH 03110

Re: **'s Request for Your Time & Expenses**

Dear Rus:

Given the lien that you have filed against 's case, he is hereby requesting that you provide him, through me as his current counsel, a listing of your time and expenses incurred in his case prior to transferring the case to me. Please see the enclosed release requesting this information signed by .

Sincerely,

Charles G. Douglas, III

Enclosure

EXHIBIT D

Victims' lawyer says $100M fund falls short

4/8/22

YDC ABUSES

J

Calls for higher damage caps, adding emotional abuse as grounds for damages, and leaving open a future option to sue.

By Kevin Landrigan

New Hampshire Union Leader

CONCORD — The lead lawyer for nearly 500 victims of alleged sexual and physical abuse at the Youth Development Center said he would recommend his clients refuse to bring their claims to an independent administrator rather than sue for damages unless lawmakers make significant changes to a House-passed bill.

David Vicinanzo told the Senate Judiciary Committee on Thursday that a proposed $100 million compensation fund in HB 1677 was not "victim friendly." "I also respectfully disagree that we have come far enough with this legislation," Vicinanzo said. "I do not believe it is a trauma-informed or victim-friendly bill."

The three changes the attorney lobbied for were:

• Removing the requirement that victims give up their right to later sue in court before entering into mediation proceedings before the administrator.

• Adding emotional abuse damages to damages that could be awarded, limited now to sexual abuse and physical abuse.

• Raising the cap of $1.5 million per claim to at least three times that. Vicinanzo also was critical of a $150,000 proposed cap for physical abuse, significantly less than a damages cap that already exists in current law for other claims against the state.

Vicinanzo choked up while speaking of a new client who said he was severely beaten 25 times a year from the time he entered YDC

+

DAVID VICINANZO

Emotional testimony

YDC Victims

at 11 until he got out at 18.

"That's not a $150,000 case, and there is no way I would recommend to him that he enter this process when the state is trying to low-ball and devalue his claim," Vicinanzo said. "It's another form of dehumanization. Those caps have to be raised."

House killed higher caps

Grady Sexton wrote that other victims said they were often forced to shower with other children for the sexual gratification of a YDC employee who was watching.

Marissa Chase of the New Hampshire Association for Justice praised the Attorney General's Office for improving the bill.

As first proposed, the administrator would be positioned under the AG's office. That person will

Now called the Sununu Youth Services Center, the YDC has been the target of a criminal investigation since 2019. The victims have brought allegations involving 150 staffers from 1960 to 2018.

Ten former workers at the YDC and one from a pre-trial facility in Concord were charged either with sexual assault or acting as accomplices in attacks on more than a dozen teenagers from 1994 to 2007.

While the cases go back as far as 1963, Vicinanzo said most of them took place during the 1990s.

"I apologize for the emotion, but I have a hard time separating myself from the suffering that I am witnessing every day," said Vicinanzo, a former federal prosecutor.

Last month, the House endorsed this bill on a voice vote after it narrowly rejected raising these damages caps and adding emotional abuse to the list of eligible claims.

Attorney General John Formella told the panel he remains open to further changes, but the bill as written is still "historic."

"We will make every effort to design a process in a way that is fair .... to bring some compensation to the victims of these crimes while balancing our need to be good stewards of public dollars," he said.

Formella said the House-passed version would permit the vast majority of the 446 individuals who brought civil lawsuit claims to seek some recovery for damages.

"I really do believe that passing this bill in some form is the right thing to do. It's the right thing for the victims. It's the right thing for the state," he said.

Bid to expand definition

The New Hampshire Coalition Against Domestic and Sexual Violence sought another change — an expansion of the definition of sexual abuse to include incidents in which there was no sexual contact or penetration.

"We heard from victims who were subjected to acts of sexual harassment, human trafficking, lewdness and indecent exposure," said Amanda Grady Sexton, instead work within the state Administrative Office of the Courts.

If the AG and lawyers for the victims can't agree on a choice of administrator, the Supreme Court would make the pick from a list of qualified candidates.

The amended bill also doubled to two years the window for filing these claims, which would end Dec. 31, 2024.

Chase said this would be the first settlement system for a specific group of victims started with a state law. All others across the country have sprung up from court rulings.

"There is a lot of responsibility riding on the state of New Hampshire to get it right," Chase said.

Chase also urged the Senate to ensure that the victims aren't taxed on their awards.

Not state's fault?

Daniel McGuire of Granite State Taxpayers "reluctantly" supported the bill but argued abhorrent individuals, not the state, were at fault for the atrocities.

"It occurred at the hands of dozen or so criminal pedophiles or sadists who were trusted by the state to do a difficult job but abused that trust," said McGuire, a former House member.

"This bill creates another 1.4 million victims, and that is the residents of the state who are forced to cough up $100 million to pay for the damages caused by these criminals."

Many speakers disagreed with McGuire's view, concluding the state was ultimately responsible for what took place.

"The state of New Hampshire cannot erase the horrendous abuse that occurred at their facilities, but the creation of a trauma- informed settlement process is an important step towards acknowledging the extraordinary harm inflicted on youth under the state's care," Grady Sexton said.

klandrigan@unionleader.com

EXHIBIT E

CRIMINAL JUSTICE STATE HOUSE

Lawyer representing hundreds criticizes state's plan to settle their YDC abuse claims

BY: **ANNMARIE TIMMINS** - MAY 2, 2022 5:41 AM

Attorney Dave Vicinanzo says he will advise his nearly 500 clients alleging abuse while in state custody to go to court rather than use a proposed $100 million settlement. He told the Senate Judiciary Committee in April that the caps on payments need to be higher and the state must allow claims for emotional abuse. (Screenshot)

This story was updated May 2, 2022 at 4 p.m. to more fully explain the position of the New Hampshire Association for Justice.

As the House did in March, the Senate on Thursday gave its overwhelming support to a bill that would create a $100 million settlement fund for the hundreds of people who've said they were sexually or physically abused as children while held at the state's former Youth Development Center. But it's uncertain how many victims will use it.

The lawyer whose team is representing nearly 500 people with

abuse claims says he'll recommend his clients seek justice in court instead because he believes a jury will treat them more fairly than the settlement process envisioned in House Bill 1677.

Among attorney Dave Vicinanzo's complaints are the caps on claims: $1.5 million for sexual abuse and $150,000 for physical abuse, and the exclusion of emotional abuse.

"It's our view that (the caps) are artificially low," Vicinanzo told the Senate Judiciary Committee earlier this month. "I'm not surprised, I suppose. Saving money is always a good thing for a state, except when it's not the right thing to do. And it's not the right thing for the state to have allowed the abuse of these kids – to have permitted it, to have sponsored it for so long and not step up and actually do right by those kids."

Joining Vicinanzo in raising concerns are the and two national groups dedicated to protecting the legal rights of children who've been abused, CHILD USA and CHILD USAdvocacy.

Marissa Chase, executive director of the New Hampshire Association for Justice, told the committee her association also believes the caps are too low and could discourage participation, especially if a plaintiff won a case filed in federal court, where verdicts are typically higher than in state courts.

She said the association would also like to see the definition of sexual abuse expanded to include, for instance, a child who had been forced to watch sexual acts. And payments to victims should be structured to spare them a tax penalty, she said.

In addition to increased caps and the inclusion of emotional abuse, they want victims to have more time to file claims, and the right to go to court if they disagree with the state's settlement. Under the bill, victims cannot file a claim or know what the state will offer them until after they've waived their right to file a lawsuit.

In supporting the bill Thursday, Sen. Donna Soucy, a Manchester Democrat, acknowledged those concerns and urged the Senate Finance Committee, which takes up HB 1677 next, to reconsider the caps and inclusion of emotional abuse. Otherwise, she said, "I don't think it will get enough people to engage in settlement."

It doesn't appear the Attorney General's Office, which worked with lawmakers to write the bill, or Gov. Chris Sununu will join Soucy in

EXHIBIT F

Lawyers for alleged Youth Development Center victims blast settlement plans

State considers how to allocate money in $100 million settlement fund

Updated: 6:28 PM EDT Jun 23, 2022

WMUR

Jennifer Crompton

News Reporter

PORTSMOUTH, N.H. — Lawyers representing hundreds of alleged Youth Development Center child abuse victims are calling New Hampshire's draft proposal for settling claims "insultingly low" and unfair.

The comments are in a letter the victims' attorneys sent to the attorney general. The attorney general's office called the letter disappointing, and there are no signs of the sides coming to an agreement yet on resolving the cases out of court.

The Youth Development Center, now called the Sununu Youth Services Center, has been the target of a criminal investigation since 2019, with 11 former workers arrested last year.

More than 600 former residents have sued the state, with allegations of physical and sexual abuse spanning more than 50 years. Gov. Chris Sununu signed into law the creation of a $100 million fund to settle abuse claims, and the attorney general's office is in the draft stage of developing a process that caps any individual's compensation at $1.5 million dollars.

In their letter to the attorney general, the victims' attorneys called the state's settlement matrix insultingly low and not victim-friendly.

"The fact that the guidelines consider enhancing factors does not justify the fact that $200,000 (as compensation for rape) and $50,000 (compensation for physical abuse) are far too low of a baseline," the attorneys said in the letter.

"No childhood victim of sexual abuse should be forced to prove, as would be required by these guidelines, that he or she was raped multiple times, by multiple guards, over the course of days, weeks or months, impregnated, given a sexually transmitted disease or threatened with a deadly weapon in order to recover more," the letter goes on.

News 9 reached out to the attorney general's office for a response, and it said in a written statement, "The letter sent by attorneys (Cyrus) Rilee and (David) Vicinanzo appears to be designed to score points in the press and not designed to provide substantive feedback and further the efforts to help victims."

Rilee said his clients would have to sign away their rights to take the state to court if they are not happy with how things turned out. He said virtually all of his and Vicinanzo's 600 clients would opt out of the process as it currently stands.

EXHIBIT G

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

217-2020-CV-00026

Merrimack, ss

DAVID MEEHAN;
MICHAEL GILPATRICK;
CORRINE MURPHY;
NATASHA MAUNSELL;
ALBERT ALLARD;
JOHN DOES Nos. 1 through 401;
JANE DOES Nos. 1 through 40

v.

N.H. DEPARTMENT OF HEALTH AND HUMAN SERVCIES, et al
(YDC and YDSU CASES)

217-2020-CV-00026	217-2021-CV-00574	217-2021-CV-00639	217-2022-CV-00030	217-2022-CV-00071
217-2021-CV-00479	217-2021-CV-00575	217-2021-CV-00640	217-2022-CV-00031	217-2022-CV-00072
217-2021-CV-00483	217-2021-CV-00576	217-2021-CV-00641	217-2022-CV-00032	217-2022-CV-00074
217-2021-CV-00499	217-2021-CV-00577	217-2021-CV-00642	217-2022-CV-00033	217-2022-CV-00075
217-2021-CV-00500	217-2021-CV-00580	217-2021-CV-00643	217-2022-CV-00034	217-2022-CV-00076
217-2021-CV-00517	217-2021-CV-00581	217-2021-CV-00644	217-2022-CV-00035	217-2022-CV-00077
217-2021-CV-00518	217-2021-CV-00582	217-2021-CV-00645	217-2022-CV-00036	217-2022-CV-00079
217-2021-CV-00519	217-2021-CV-00587	217-2021-CV-00676	217-2022-CV-00037	217-2022-CV-00080
217-2021-CV-00520	217-2021-CV-00588	217-2021-CV-00677	217-2022-CV-00038	217-2022-CV-00081
217-2021-CV-00521	217-2021-CV-00589	217-2021-CV-00678	217-2022-CV-00039	217-2022-CV-00082
217-2021-CV-00523	217-2021-CV-00590	217-2021-CV-00679	217-2022-CV-00040	217-2022-CV-00083
217-2021-CV-00524	217-2021-CV-00591	217-2021-CV-00680	217-2022-CV-00041	217-2022-CV-00084
217-2021-CV-00525	217-2021-CV-00592	217-2021-CV-00681	217-2022-CV-00042	217-2022-CV-00086
217-2021-CV-00526	217-2021-CV-00594	217-2021-CV-00682	217-2022-CV-00043	217-2022-CV-00087
217-2021-CV-00538	217-2021-CV-00593	217-2021-CV-00683	217-2022-CV-00044	217-2022-CV-00088
217-2021-CV-00539	217-2021-CV-00595	217-2021-CV-00684	217-2022-CV-00045	217-2022-CV-00089
217-2021-CV-00540	217-2021-CV-00596	217-2021-CV-00685	217-2022-CV-00046	217-2022-CV-00090
217-2021-CV-00541	217-2021-CV-00598	217-2021-CV-00686	217-2022-CV-00047	217-2022-CV-00091
217-2021-CV-00544	217-2021-CV-00599	217-2021-CV-00688	217-2022-CV-00048	217-2022-CV-00092
217-2021-CV-00546	217-2021-CV-00600	217-2021-CV-00689	217-2022-CV-00050	217-2022-CV-00093
217-2021-CV-00547	217-2021-CV-00601	217-2021-CV-00690	217-2022-CV-0005 1	217-2022-CV-00094
217-2021-CV-00548	217-2021-CV-00602	217-2021-CV-00691	217-2022-CV-00052	217-2022-CV-00095
217-2021-CV-00549	217-2021-CV-00603	217-2021-CV-00720	217-2022-CV-00053	217-2022-CV-00096
217-2021-CV-00550	217-2021-CV-00604	217-2021-CV-00721	217-2022-CV-00054	217-2022-CV-00097
217-2021-CV-00553	217-2021-CV-00605	217-2021-CV-00722	217-2022-CV-00055	217-2022-CV-00098
217-2021-CV-00554	217-2021-CV-00607	217-2021-CV-00723	217-2022-CV-00056	217-2022-CV-00099
217-2021-CV-00556	217-2021-CV-00608	217-2021-CV-00724	217-2022-CV-00057	217-2022-CV-00100
217-2021-CV-00557	217-2021-CV-00609	217-2021-CV-00741	217-2022-CV-00058	217-2022-CV-00101
217-2021-CV-00558	217-2021-CV-00610	217-2022-CV-00018	217-2022-CV-00059	217-2022-CV-00102
217-2021-CV-00559	217-2021-CV-00611	217-2022-CV-00019	217-2022-CV-00060	217-2022-CV-00103
217-2021-CV-00560	217-2021-CV-00612	217-2022-CV-00020	217-2022-CV-00061	217-2022-CV-00104
217-2021-CV-00563	217-2021-CV-00613	217-2022-CV-0002 1	217-2022-CV-00062	217-2022-CV-00105
217-2021-CV-00564	217-2021-CV-00614	217-2022-CV-00022	217-2022-CV-00063	217-2022-CV-00106
217-2021-CV-00566	217-2021-CV-00615	217-2022-CV-00023	217-2022-CV-00064	217-2022-CV-00107
217-2021-CV-00567	217-2021-CV-00616	217-2022-CV-00024	217-2022-CV-00065	217-2022-CV-00108
217-2021-CV-00568	217-2021-CV-00617	217-2022-CV-00025	217-2022-CV-00066	217-2022-CV-00109
217-2021-CV-00569	217-2021-CV-00618	217-2022-CV-00026	217-2022-CV-00067	217-2022-CV-00110
217-2021-CV-00570	217-2021-CV-00620	217-2022-CV-00027	217-2022-CV-00068	217-2022-CV-00111
217-2021-CV-00572	217-2021-CV-00621	217-2022-CV-00028	217-2022-CV-00069	217-2022-CV-00113
217-2021-CV-00573	217-2021-CV-00638	217-2022-CV-00029	217-2022-CV-00070	**-Continued-**

217-2022-CV-00114	217-2022-CV-00165	217-2022-CV-00217	217-2022-CV-00269	217-2022-CV-00321
217-2022-CV-00115	217-2022-CV-00166	217-2022-CV-00218	217-2022-CV-00270	217-2022-CV-00322
217-2022-CV-00116	217-2022-CV-00167	217-2022-CV-00219	217-2022-CV-00271	217-2022-CV-00323
217-2022-CV-00117	217-2022-CV-00168	217-2022-CV-00220	217-2022-CV-00272	217-2022-CV-00324
217-2022-CV-00118	217-2022-CV-00169	217-2022-CV-0022 1	217-2022-CV-00273	217-2022-CV-00325
217-2022-CV-00119	217-2022-CV-00170	217-2022-CV-00222	217-2022-CV-00274	217-2022-CV-00326
217-2022-CV-00120	217-2022-CV-00171	217-2022-CV-00223	217-2022-CV-00275	217-2022-CV-00327
217-2022-CV-00121	217-2022-CV-00172	217-2022-CV-00224	217-2022-CV-00277	217-2022-CV-00328
217-2022-CV-00122	217-2022-CV-00173	217-2022-CV-00225	217-2022-CV-00278	217-2022-CV-00329
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217-2022-CV-00125	217-2022-CV-00176	217-2022-CV-00228	217-2022-CV-00281	217-2022-CV-00332
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217-2022-CV-00150	217-2022-CV-00202	217-2022-CV-00254	217-2022-CV-00305	217-2022-CV-00356
217-2022-CV-00151	217-2022-CV-00203	217-2022-CV-00255	217-2022-CV-00306	217-2022-CV-00357
217-2022-CV-00152	217-2022-CV-00204	217-2022-CV-00256	217-2022-CV-00307	217-2022-CV-00358
217-2022-CV-00153	217-2022-CV-00205	217-2022-CV-00257	217-2022-CV-00308	217-2022-CV-00359
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217-2022-CV-00156	217-2022-CV-00208	217-2022-CV-00260	217-2022-CV-0031 1	217-2022-CV-00362
217-2022-CV-00157	217-2022-CV-00209	217-2022-CV-00261	217-2022-CV-00312	217-2022-CV-00363
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217-2022-CV-00160	217-2022-CV-00212	217-2022-CV-00264	217-2022-CV-00316	217-2022-CV-00366
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217-2022-CV-00163	217-2022-CV-00215	217-2022-CV-00267	217-2022-CV-00319	
217-2022-CV-00164	217-2022-CV-00216	217-2022-CV-00268	217-2022-CV-00320	

PARTIAL OBJECTION TO PLAINTIFFS' MOTON TO LIFT STAY

NOW COME the State Defendants (as defined in their answer), by and through their counsel, the Office of the Attorney General, and partially object to the Plaintiffs' Motion to Lift Stay to the extent it conflicts with the proposals contained in the State Defendants' other submissions of this same date. In support of this Objection, the State Defendants state as follows:

1. The State concurs with Plaintiffs' counsel that victims of abuse deserve justice. The State is not defending these cases through delay. However, the State, with the full agreement of Plaintiffs' counsel for approximately a year, did not assert its legal position that this matter was not appropriately a class action. Instead, that time was used to proceed with the extremely important work then being done by the criminal investigators which eventually led to the YDC Task Force. That work has resulted in eleven indictments of former state employees so far and that work continues.

2. The State also used that period of a stay to discuss a resolution of the civil claims with Plaintiffs' counsel, including creation of a "claims matrix," a waiver of legal defenses by the State, and creation of a settlement fund far in excess of the Attorney General's statutory settlement authority, all of which required legislative action.

3. The State has done everything it said it would do despite the fact that the Plaintiffs' counsel have not. A contemplated "exchange of information" has never, to this day, occurred. Instead, Plaintiffs' counsel have not provided the facts of their clients' cases to the State Defendants, their attorneys, or the Court, instead using virtually identical complaints that provide no factual information regarding what their clients' individual claims are or what the

legal theories for those claims are. As a result, those complaints were properly dismissed by the Court because they failed to satisfy even the most liberal of pleading standards.

4. Meanwhile, the Attorney General, the Legislature, and the Governor have taken the meaningful step of enacting exactly the type of legislation which was contemplated by the parties two years ago, and have created the YDC Settlement Fund. The State has worked tirelessly in the last several weeks to stand up the operations of this Fund and invited cooperation from Plaintiffs' counsel, but counsel have refused to meaningfully engage.

5. It appears that Plaintiffs' counsel are attempting to dissuade victims from participating in an alternative dispute resolution mechanism. If Plaintiffs' counsel sincerely believe that litigation is still the better option for their clients, they can pursue that option and the State will defend those cases accordingly.

6. The State Defendants agree with the development of an orderly complex litigation docket system for the management of the YDC and YDSU civil cases. The State Defendants are submitting a proposal which will gradually lift the stay on all of these cases, giving the Plaintiffs yet another chance to properly plead their claims while simultaneously allowing the State Defendants to respond to the complaints and provide an unprecedented, early production of documents.

7. As previously stated, the State concurs that the victims of abuse deserve justice. The Court will establish a system that provides for the organized litigation of claims if victims choose that path, and, if trials are needed, the Court will schedule those trials accordingly. However, if victims choose to have their claims resolved through the YDC Settlement Fund process, that process will be managed by the YDC Settlement Fund Administrator and will also operate in an efficient, effective manner. The State has no doubts that the Court, the Fund

Administrator, and all the attorneys involved in these cases will work collectively to spare the victims added trauma.

Wherefore, the State Defendants request that this honorable Court:

A. Deny the Motion to Lift Stay;

B. Grant partial relief from the stay as detailed in the State's proposed procedural order; and

C. Grant such further relief as is just and equitable.

Respectfully Submitted,

State of New Hampshire; New Hampshire Department of Health and Human Services; Lori Shibinette, Commissioner of New Hampshire Department of Health and Human Services; Department of Youth Development Services; Division of Children, Youth, and Families; Division of Juvenile Justice Services; and Sununu Youth Services Center, a/k/a Youth Development Center and Youth Development Services Unit, f/k/a State Industrial School and Adolescent Detention Center

By their attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: June 24, 2022

/s/Jennifer Ramsey
Jennifer S. Ramsey, Bar #268964
Senior Assistant Attorney General
Lawrence P. Gagnon, Bar #271769
Attorney
Civil Bureau
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650
jennifer.s.ramsey@doj.nh.gov
lawrence.p.gagnon@doj.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the Court's electronic filing system to all parties of record on the date above.

/s/Jennifer Ramsey
Jennifer S. Ramsey

EXHIBIT H

NIXON PEABODY

Nixon Peabody LLP
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Manchester, NH 03101-2031

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RILEE & ASSOCIATES PLLC
ATTORNEYS AT LAW

CYRUS F. RILEE, II
LAURIE B. RILEE*
*ALSO ADMITTED IN ME & CA

July 25, 2022

BY EMAIL

Hon. John M. Formella
Attorney General
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301
Email: john.m.formella@doj.nh.gov

RE: YDC Claims Process and Guidelines

Dear Attorney General Formella:

This letter is provided at Senior Assistant Attorney General Ramsey's request seeking additional feedback and input in follow-up to Claimants' counsel's first response, dated June 22, 2022, to the Attorney General's proposed claims processes and guidelines with respect to RSA 21-M:11-a.

As a preliminary matter, we submit that the proposed Claims Process is unsound from the outset because you have disregarded the proposals and suggestions of the abuse survivors from the very beginning. Our largely fruitless discussions relating to HB 1677, and your "sound bites for the press" dismissal of our earlier comments, give us little hope that you will meaningfully address the fundamental flaws that are baked into the AG's proposed processes, guidelines, and forms. The survivors believe that this back-and-forth is window-dressing regarding the AG's statutory obligation to engage in negotiations. The lead survivor, who first reported the severe sexual, physical and emotional abuse he suffered to the State Police, is David Meehan. Here is how he summarizes the State's self-serving process:

> It is really dishonest of the State to keep saying the bill they passed is 'victim friendly' and 'trauma informed' when the actual victims of the State's abuse don't agree with them. I personally appreciate an attempt at reconciliation and an attempt at an acknowledgement of the State's guilt by some State representatives. However, it is my opinion that this 'bill' is an unjust use of the law, an attempt to pacify and take advantage of the actual victims. They have ignored what we told them would make it work. I don't believe that the 'punishment' the State has approved for itself actually fits the State's crimes.
>
> And they wonder why we don't trust them?

The deficient character of the State's proposal is shown by who supports it: almost no one. To our knowledge, the sole non-governmental lawyer to publicly support the State's proposal is Chuck Douglas, who years ago callously referred to the child victims here as "problem children," and, as judge, locked up a 13-year-old girl at YDC indefinitely because she declined to identify her rapist. And who wrote court decisions approving sub-standard conditions for kids in State custody to save the State money and effort. *See, e.g., In re Jane Doe*, 118 NH 422 (1978); *John M.*, 122 NH 1120 (1982).

Accordingly, we are hard-pressed to expect that any consequential revisions will result. For these reasons, we decline to mark up the AG's proposed guidelines, forms, and related documents line-by-line. We have several additional thematic comments.

Turning to substance, what is most readily apparent is that other than the Introduction's empty use of the words "trauma-informed" and "victim centered," no other aspect of the proposed Claims Process for Administration is truly imbued with those qualities. While the primary goal of a trauma-informed process is to avoid re-traumatizing a person, the proposed Claims Process practically assures that YDC victims will be re-traumatized. It is a one-sided inquisition, in which the Claimants—survivors of sexual and physical assault and psychological abuse—are denied any presumption of credibility (a presumption enjoyed by other victims of crime), expected to bear the entire burden of turning over documents and information with no corresponding burden on the state to provide information either confirming or dispelling its culpability (even though the state holds thousands or millions of relevant records within its exclusive custody and control), and forced to undergo a victim-*un*friendly interrogation at the hands of individuals who have no specialized training in dealing with trauma survivors. Indeed, the Claims Process's starting point appears to be to treat survivors as liars and cheaters who are out to steal money from the State. It is clear that although your office understands that the words "trauma-informed" and "victim centered" have some importance, it has no real understanding of what those words mean. Being trauma-informed, victim-centered and compassionate toward victims is not about giving away money to fraudsters. It is actually the key to communicating competence and fairness, and getting to the truth efficiently, so that the State can deal with matters responsibly rather than minimize cost. A truly trauma-informed, victim-centered process addresses all of the issues described herein.

The proposed Claims Process will be intimidating and painful for survivors, because it has the look, feel, and structure of a trap. It promises just resolution of claims, but actually offers a Hobson's choice: to take the artificially-suppressed and potentially "adjusted" (read: diminished) offer from the AG's Designee; to roll the dice by taking an unknown but likely similarly low offer from the Administrator; or to withdraw the claim and take nothing. It lacks any sense of fairness, balance, or due process and fully tilts the scales of justice in favor of the culpable party—the state—and against its victims. To begin, the process forces survivors to complete tone-deaf forms and prove minute details from traumatic events they endured as children—events many survivors have consciously or subconsciously suppressed for decades and are just now beginning to recall and come to grips with. ,. Of course, it will be nearly, if not completely, impossible for them to obtain or produce the documents and information contemplated by the Claims Process without the right to discovery from the state. After calculating their claim's overall value, the AG Designee is empowered not only to "adjust" (again, read: deviate downward from) a claim's calculated valuation, but also to autocratically decree that a claim is fraudulent and refer a Claimant for prosecution. The survivors' lived experiences will be given no deference, even though their accounts will be provided under oath and subject to the pains and penalties of perjury.

For the State's tactical advantage, and its apparent desire to drive a wedge between the survivors and their advocates, the process forces Claimants' attorneys to draft detailed fee affidavits immediately upon claim submission, which will disclose privileged information as to their representation of the survivors, their strategy and work product. The proposed Claims Process arbitrarily caps and threatens claw back of earned

attorney's fees. The process signals that the Attorney General seeks to target the advocates who have brought the State's conduct to light and will confront survivors at every opportunity.

The flaws in the proposed Claims Process are perhaps attributable to the fact that the very same attorneys charged with vigorously defending the state against the survivors' civil lawsuits have also created, and will oversee, the Settlement Fund's claims adjudication and award distribution. This inherent tension ensures that the Claims Process inevitably will be biased against claimants. It also ensures that Claimants—many of whom already harbor an understandable skepticism of state actors and their intentions—will rightfully assume that the AG Designee will withhold and conceal evidence that may be damaging to the State during the Claims Process's lopsided settlement discussions, and may ambush them by presenting previously undisclosed evidence to the administrator in an effort to knock down their claims' valuations.

Attorney Ramsey asked if we have an alternative suggestion for establishing claim values. Across the board, they must be increased substantially to more realistically approximate the verdicts and settlements awarded to survivors in courtrooms across America. Survivors should not have to rely on application of "aggravating circumstances" to raise their awards to a reasonable number. To be clear, the state's notion that a survivor of child rape is entitled to no more than $200,000 unless they were impregnated or infected with an STD is gut-wrenching and appalling. We ask the attorneys in your office to consider what they believe a fair award would be if their own children or grandchildren were taken from their custody, institutionalized and forcibly raped or sodomized by the same adults who can control whether they will be allowed out of their cells and even whether they will be allowed to see their parents. We would be shocked to learn that they believe $200,000 would be sufficient compensation. Further, reducing the victims' lived experiences to a series of mechanical calculations sets the process up to be rife with proof problems, and shows that the state's proposed process and valuations are driven more by the statutory caps than the inescapable reality of much-higher settlement values associated with civil lawsuits. For a close-to-home example, the Concord School District recently settled claims by a child victim against a former teacher for $1,000,000.

And it is completely mystifying that the proposal sets caps at $150,000 for unlimited beatings and torture, and $1.5 Million for unlimited amounts of sexual abuse (some of our survivors were raped well in excess of 100 times). For other state torts – for instance, if the State installed a guardrail incorrectly, resulting in injury – the caps would be $475,000 to a maximum of approximately $4.6 Million. There is no reasonable or humane justification to value a car accident cause by negligence at three (3) times the value of deliberate rape or torture, caused by the State's breach of fiduciary duty to vulnerable, helpless children. It is also unfathomable that the State itself claims these cases resolve nationally for an average of $730,000 (we disagree – our figures say $1.5 Million) per case, but the State's actual proposal is multiples less than its own average.

As David Meehan summed it up, "And they wonder why we don't trust them?"

Sincerely,

/s/ Cyrus F. Rilee

Cyrus F. Rilee, II, Esq.
RILEE & ASSOCIATES, P.L.L.C.

/s/ David A. Vicinanzo

David A. Vicinanzo, Esq.
NIXON PEABODY LLP

DAV:cln

EXHIBIT I

6:08

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general's decision, they can ask for more, withdraw their complaint and file a lawsuit, or appeal to the state appointed fund administrator, former Justice John Broderick, and give up the right to sue.

Sexual abuse claims are capped at $1.5 million and physical abuse claims will net no more than $150,000 -- no matter how much abuse survivors endured. Some plaintiffs in a lawsuit brought by attorneys David Vincinanzo and Rus Ribee have alleged years of rapes and beatings, and the attorneys have said the payments are often less than what survivors could win in court.

"The State's settlement process created to favor only the State is not a product of negotiation with the victims and is unfriendly to them," Vincinanzo wrote in an emailed statement.

The fund's defenders say the settlement process is faster than a lawsuit.

MORE INFORMATION

unionleader.com

10/3/22

EXHIBIT J

OAG, but instead we see disingenuous gamesmanship, not engagement or negotiation. Who has ever heard of a settlement process that wasn't negotiated with the harmed victims? Such a process has never happened, because people know it will never work. And that it is not fair or honest.

The State abused these folks as kids. Now it's abusing them again by playing political spin games, pretending this is a victim-friendly process while ignoring and disrespecting the actual child victims.

As David Meehan, the first victim to break the silence, has said: "And they wonder why we don't trust them."

Recommended

New Hampshire COVID-19 updates: Numbers for cases, hospitalizations, vaccinations

The following is a statement in response by the attorney general's office:

We reached out repeatedly to Nixon Peabody and Rilee during the first phase of drafting the Claims Process and received nothing constructive in response. During this second phase, we chose instead to work very closely with the other claimants' counsel who were willing to engage with us constructively, and the Claims Process is better for it, as demonstrated by the support of those counsel and the Committee's approval of the revised process today.

EXHIBIT K

RILEE & ASSOCIATES PLLC
ATTORNEYS AT LAW

FEE AGREEMENT

I, _____ (hereinafter "Client") hereby retain the law firm of Rilee & Associates, P.L.L.C., Attorney Cyrus F. Rilee, III, and Charles R. Capace & Associates, P.C., Attorney Charles R. Capace (hereinafter "Attorneys") to represent Client with regard to claims against the State of New Hampshire for damages resulting from incidents that occurred on or about 1960-2021. These claims include all claims for monetary damages against individuals, corporations, governmental entities and/or insurance carriers legally liable for payment of claimed damages and losses. Client understands and agrees that Client is only hiring Attorneys for the sole purpose of Client's claims described above, and any services outside the scope of this agreement shall be subject to a separate Fee Agreement.

Client specifically authorizes Attorneys to undertake negotiations and/or file suit or institute legal proceedings necessary on Client's behalf. Client authorizes Attorneys to enter into such agreements as may be necessary for the orderly prosecution of Client's case. Client further authorize Attorneys to retain and employ, at Client's expense, the services of any experts, investigators, contract attorneys, and other outside contractors as Attorneys deem necessary or expedient in representing Client's interests.

1. **ATTORNEYS' FEES:** Client understands that Client has the option of retaining Attorneys under an hourly fee arrangement or under a contingent fee arrangement, as explained below. Client shall select which fee arrangement Client has chosen when Client signs page 3 of this Fee Agreement.

   Hourly Fee Arrangement: Client agrees to pay Attorneys on an hourly basis. Attorneys' hourly rate is $400.00/hour. Client shall provide a retainer in the amount of $10,000.00 upon signature of this Fee Agreement and shall replenish said retainer when the balance reaches $1,000.00.

   Contingent Fee Arrangement: Client agrees to retain Attorneys under a contingent fee arrangement. Client agrees to pay Attorneys a fee of forty percent (40%) of the gross recovery in Client's case by way of settlement, arbitration award, or jury verdict. This fee is based upon the gross settlement amount prior to any further reductions for payment of any and all costs and expenses incurred, and distributions made on behalf of Client. Client understands that under this contingency fee arrangement, that if no recovery is made, Client will not be indebted to Attorneys or Attorneys' offices for any sum whatsoever as Attorneys' fees. Client remainsresponsible for any and all expenses incurred as outlined below. In the event that the case is appealed to the Court of Appeals or Supreme Court, Attorneys reserve the right to increase this contingent fee to forty five percent (45%) to reflect the significant time and resources associated with such an appeal.

2. **COSTS AND EXPENSES:** In addition to paying Attorneys' fees, Client agrees to pay all costs and expenses in connection with Attorneys' handling of this matter. Said costs and expenses may include (but are not limited to) the following: experts, deposition fees, photocopying, postage, Federal Express or other delivery charges, subpoena costs, court costs, sheriff's and service fees, travel expenses, and investigation fees, and all associated interest, expenses, and fees incurred by Attorneys to any and all lenders that may advance the expenses and disbursements of Client's claim.

   If Client has elected the Hourly Fee Arrangement, Client will be billed monthly for all costs and expenses and said charges shall be reflected on Client's monthly invoice.

   If Client has elected the Contingent Fee Arrangement, the costs and expenses incurred will be payable to Attorneys at the time of distribution of the "net" settlement proceeds to Client. "Net" proceeds mean the amount of funds remaining after deductions for: (a) attorney contingent fees; (b) litigation expenses and disbursements; and/or (c) payment of any liens or balances on bills related to these claims.

   Client remains personally responsible for payment of all medical bills associated with treatment for their injuries, and any other legal liens asserted at any time against the proceeds from this claim.

3. **NO GUARANTEE:** Client acknowledges that Attorneys have made no promise or guarantee regarding the outcome of Client's legal matter. Attorneys have advised Client that litigation in general is risky, can take a long time, can be very costly, and can be very frustrating.

4. **TERMINATION OF REPRESENTATION:** Client further acknowledges that Attorneys have the right to cancel this agreement and withdraw in Client's matter if, in Attorneys' professional opinion, the matter does not have merit, Client does not have a reasonably good possibility of recovery, Client refuses to follow the recommendations of Attorneys, Client fails to abide by the terms of this agreement, and/or if Attorneys continued representation would result in a violation of the Rules of Professional Conduct. Client has the right to terminate the representation upon written notice to Attorneys.

   Should this agreement be terminated at any time, Attorneys shall be entitled to fees in the amount of forty percent (40%) of the last settlement "offer." In no event shall the fee owed exceed forty percent (40%) of the settlement offer pending at the time of termination. In addition, Attorneys will be entitled to reimbursement of costs, expenses and disbursements.

5. **ENTIRE AGREEMENT:** Client has read this Fee Agreement in its entirety and has had the opportunity to discuss the agreement with Attorneys. Client agrees to and understands the terms and conditions set forth herein. Client acknowledges that there are no other terms or oral agreements existing between Attorneys and Client. Client enters into this agreement knowingly and voluntarily. This Agreement may not be amended or modified in any way without the prior written consent of Attorneys and Client.

Date: 5-3-21

Attorney Cyrus F. Rilee, III
Rilee & Associates, P.L.L.C.

Date: 5-3-21

CFR

Attorney Charles R. Capace
Charles R. Capace & Associates, P.C.

Date: 4-26-21

Client (signature)

Client (Print name)

FEE ARRANGEMENT SELECTION (*SELECT ONE*):
Place your initials next to the fee agreement option you have selected.

I agree to pay a forty percent (40%) contingent fee plus reimbursement of out-of-pocket costs and expenses as explained above in paragraphs one (1) and two (2).

OR

_____ I agree to pay hourly fees plus out-of-pocket expenses as explained above in paragraphs one (1) and two (2).

EXHIBIT L

Affidavit of [redacted] [John Doe # 399]

I, [redacted] [John Doe # 399], state as follows under oath:

1. I retained Attorney Cyrus (Rus) Rilee, of Rilee & Associates, PLLC, to represent me on December 17, 2020, when I signed a representation / fee agreement with him.

2. Attorney Rilee later asked Nixon Peabody to assist him with representing me in connection with my civil claims stemming from treatment that I suffered while I was detained at the Youth Detention Center in Manchester, NH ("YDC case").

3. After that, Attorney David Vicinanzo of Nixon Peabody became one of my lawyers for my YDC case.

4. I was charged with a criminal offense that carried a maximum potential sentence of one hundred and twenty (120) months, or ten (10) years.

5. Attorney Vicinanzo agreed to represent me in that criminal matter because he also represented me in my YDC case.

6. Although Attorney Vicinanzo represented me in two separate legal matters, I did not hear from him for several months.

7. Because of the lack of communication from Attorney Vicinanzo, I decided to seek other counsel for my YDC case.

8. I spoke to a friend about my YDC case, and he told me that he was represented by Attorney Samantha Heuring of Douglas, Leonard & Garvey, P.C. My friend told me that he was very happy with his representation because, in part, Attorney Heuring was the most responsive lawyer he had worked with.

9. I therefore contacted Attorney Heuring in late January 2023, and I was satisfied with Attorney Heuring's communication with me.

10. As such, I asked Attorney Heuring to send me an authorization to sign so that she could get a copy of my client file from Attorney Rilee and Attorney Vicinanzo.

11. Attorney Heuring did as I requested and promptly sent me an authorization for me to review.

12. I promptly returned a signed authorization to Attorney Heuring for this purpose.

13. On February 1, 2023, I finally received a call from Attorney Vicinanzo, who did not yet know that I intended to obtain new counsel for my YDC case. During the call, I did not tell Vicinanzo that I intended to obtain new counsel for my YDC case.

14. On February 3, 2023, Attorney Heuring directed her office to send the signed authorization to Attorney Rilee and Attorney Vicinanzo to request a copy of my client file.

15. On February 7, 2023, I received another call from Attorney Vicinanzo, who told me that he received a letter requesting my file from Attorney Charles (Chuck) Douglas, who works with Attorney Heuring, of Douglas, Leonard & Garvey, P.C.

16. From Attorney Vicinanzo's voice during the call, it sounded like his voice was catching and that he was frustrated.

17. Attorney Vicinanzo told me that, if I switched attorneys for my YDC case, I would have to pay Attorney Vicinanzo and Attorney Rilee their fee (which I understood to mean 40 %), that I would separately have to pay Douglas, Leonard & Garvey's firm their one-third fee, and that I would be left with the remainder (i.e., 26 & 2/3 %) of the compensation from my YDC case.

18. Attorney Vicinanzo further told me to the effect that, "whatever Chuck can do, we can do the same" and, if I remained with Attorney Vicinanzo's office for my YDC case, then I would not have to separately pay two offices a percentage of the compensation from my YDC case.

19. Attorney Vicinanzo strongly discouraged me from retaining Douglas, Leonard, & Garvey for my YDC case, because he said to the effect that, "Chuck is eighty years old, semi-retired in Florida, and he wants to come in and take whatever money he can get for his retirement."

20. Attorney Vicinanzo then added to the effect that, "when the state low balls you, Chuck will take their first offer," and "Chuck already made it clear that he won't fight and is just trying to get whatever he can."

21. Finally, Attorney Vicinanzo said that he was only "doing" my criminal case for free because he also represented me on my YDC case, and he said it "would be awkward" for him to represent me related to my criminal charge if I "jumped ship" on my YDC case by obtaining new representation.

22. I interpreted the foregoing statement by Attorney Vicinanzo to mean that he would not do as good of a job representing me related to my criminal case if I took my YDC case to another office.

23. Based on this phone call from Attorney Vicinanzo, I no longer felt comfortable with him representing me in any capacity. I therefore terminated his representation of me, in all capacities, shortly thereafter.

24. I contacted Attorney Heuring on February 8, 2023, the day after I received the foregoing call from Attorney Vicinanzo. I asked her to represent me in connection with my YDC case. She agreed, and I am very happy with the representation I have received in my YDC case.

25. Attorney Heuring further assisted me with obtaining representation for the criminal charge that I was facing.

26. By February 13, 2023, Attorney Heuring found me a criminal attorney to represent me. Now, only three months later, my criminal case is nearly resolved, and I am very happy with the representation I have received in my criminal case.

27. Because of the way that Attorney Vicinanzo treated me, I do not want him to receive any fees from the future settlement of my YDC case.

28. Additionally, because Rilee & Associates and Nixon Peabody have not done any work on my YDC case, I do not want them to receive any fees from the future settlement of my YDC case.

[remainder of page intentionally left blank]

FURTHER AFFIANT SAYETH NOT.

Date: 5-20-2023

STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

On this 20th day of May 2023, personally appeared before me and gave solemn oath that the foregoing is true and accurate to the best of his knowledge and belief.

Before me,

SAMANTHA J. HEURING NOTARY PUBLIC STATE OF NEW HAMPSHIRE

Samantha Heuring

~~Justice of the Peace~~ / Notary Public
My Commission Expires: 02/22/28

EXHIBIT M

Affidavit of Charles G. Douglas

I, Charles G. Douglas, state as follows under oath:

1. I am a partner at Douglas, Leonard & Garvey, P.C.

2. In June 2022, I began representing John Doe # 95 in connection with John Doe #95 v. State of New Hampshire, et al. (Case No. 217-2022-cv-00018).

3. Through my own personal knowledge, I know that the person who swore, under oath, to the statements contained in the affidavit attached at Exhibit A is, indeed, the person who is John Doe # 95.

[remainder of page intentionally left blank]

FURTHER AFFIANT SAYETH NOT.

Date: May 25, 2023

Charles G. Douglas

STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

On this 25th day of May 2023, Charles G. Douglas personally appeared before me and gave solemn oath that the foregoing is true and accurate to the best of his knowledge and belief.

Before me,

Susan G. Mello

Justice of the Peace / ~~Notary Public~~
My Commission Expires: 2/19/25