

**UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION**

**IN RE: NEW YORK DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION MEDICATIONS WITH  
ABUSE POTENTIAL PRISONER LITIGATION**

MDL No. 3086

**ORDER DENYING TRANSFER**

**Before the Panel:**\* Plaintiffs in all actions listed on Schedule A move under 28 U.S.C. § 1407 to centralize this litigation, which involves the alleged wrongful denial or discontinuation of medications with abuse potential from incarcerated patients in New York prisons, in the Southern District of New York. This litigation currently consists of 53 actions pending in three adjoining districts, as listed on Schedule A. The three groups of defendants—New York Attorney General-represented defendants,<sup>1</sup> treating physician defendants in 34 actions,<sup>2</sup> and additional physician defendants in three Southern District of New York actions<sup>3</sup>—oppose centralization. The additional physician defendants alternatively suggest the Northern District of New York as the transferee forum.

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\* Judge Karen K. Caldwell took no part in the decision of this matter.

<sup>1</sup> Defendants Carl Koenigsmann, David Dinello, Susan Mueller, John Hammer, Paula Bozer, and Kristin Salotti.

<sup>2</sup> Defendants Albert Acrish, Ann Andola, Mary Ashong, Ashley Harris Baker, Michelle Belgard, Robert Bentivegna, Robert Burdick, Bandi Lynn Corigliano, Brady Devlin, Rebecca Fears, Razia Ferdous, Deborah Graf, Deborah A. Greer, Mikhail Gusman, David Haimes, Kathryn Infantino, David Karandy, Kyoung Kim Yelena Korobkova, Chung Lee, Jacqueline Levitt, Kathleen Mantaro, Jon S. Miller, Hope Oberteau, Gerald Ortego, Jayson Perez, Patricia Pulver, Veronica Ruiz, Lester Silver, Howard Silverberg, Richard Slagle, David Thompson, Janice Wolf-Friedman, Christopher Wright, Mandi Zaccagnino, and Shehab Zaki.

<sup>3</sup> Defendants Lester Silver, Robert Bentivegna, Robert Burke, and Gaetan Zamilus in *Ortiz v. Dinello*, C.A. No. 1:23-3547 (S.D. New York), *Wilkerson vs. Hammer*, C.A. No. 1:23-3397 (S.D. New York), and *Miller v. Hammer*, CA. No. 1:23-3462 (S.D. New York).

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After considering the argument of counsel, we are not persuaded that centralization is necessary for the convenience of the parties and witnesses or to further the just and efficient conduct of this litigation. The actions contain common factual questions concerning allegations that various New York State Department of Corrections and Community Supervision (DOCCS) employees and medical personnel denied or discontinued, without medical justification, various medications with an alleged abuse potential to incarcerated patient plaintiffs. Despite this factual and legal commonality, centralization does not appear needed to further the just and efficient conduct of this litigation.

Several factors lead us to this conclusion. First, each case likely will turn on the unique circumstances of each patient (*e.g.*, each patient's medical condition, treatment history, substance abuse history, administrative exhaustion efforts, etc.). Second, the cases are at significantly different procedural postures, which weighs against centralization. Fourteen actions were severed from the *Allen I* action, *see Allen v. Koenigsmann*, C.A. No. 1:19-8173 (S.D. New York), and have been litigated since 2019. In most of those actions, discovery has ended and summary judgment briefing ends in early 2024. One action, *Rahman v. Lee*, C.A. No. 1:23-5665 (S.D. New York), appears to be ready for trial. Moreover, in a tranche of 25 cases, discovery is set to conclude in mid-August 2024. In contrast, service is still being completed in most actions pending outside the Southern District of New York.

We have, on occasion, centralized litigation concerning conditions of confinement. For instance, in *In re Texas Department of Corrections Inmate Trust Fund Litigation*, the Panel centralized cases in which plaintiffs alleged that the Texas Department of Corrections had “mismanaged and/or misappropriated interest earned on funds deposited in the Inmate Trust Fund”. *See* Transfer Order at 1, MDL No. 746 (J.P.M.L. Feb. 22, 1988), Dkt. No. 2. But this litigation over whether and why incarcerated patients, who suffered a variety of physical and mental conditions at numerous New York institutions, were not given a variety of medications does not involve a similarly narrow issue.


This litigation instead is more akin to *In re Texas Prison Conditions-of-Confinement Litigation*, 52 F. Supp. 3d 1379, 1379 (J.P.M.L. 2014), which involved “seven actions (six individual wrongful death actions and one class action) [with] allegations that inmates in various Texas state prison facilities—in particular, prisoners with disabilities—have suffered injury or death as a result of conditions in inmate living quarters alleged often to be brutally hot during the summer months.” The Panel denied centralization, noting that “[e]ach of those six actions involves a unique inmate who was incarcerated at a unique facility and whose death necessarily occurred in unique circumstances,” that the involved actions were “at markedly different procedural postures,” and “the same law firm represents plaintiffs in all seven actions, and defendants are all represented by the Texas attorney general,” so “cooperative efforts” among the parties and courts “should be practicable.” *Id.* at 1380. Similarly, there are unique circumstances here surrounding the denial or discontinuation of each medication to each plaintiff, the actions are at vastly different procedural postures, and informal coordination among the involved counsel and courts remains a viable alternative to formal centralization.

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To the extent there is any possibility of duplicative discovery or inconsistent pretrial rulings, voluntary cooperation and coordination among the parties and the involved courts is a preferable alternative to centralization. *See, e.g., In re Eli Lilly & Co. (Cephalexin Monohydrate) Pat. Litig.*, 446 F. Supp. 242, 244 (J.P.M.L. 1978); *see also* MANUAL FOR COMPLEX LITIGATION, FOURTH, § 20.14 (2004). Because common counsel brought all actions and defendants are represented by many of the same counsel, the parties should be able to agree on a plan for common discovery and motion practice that minimizes the risk of duplication.<sup>4</sup> Moreover, cooperation among the three judges in the three adjacent districts may help the actions proceed on a common schedule. As in other MDLs with a significant number of cases in other courts,<sup>5</sup> it may be advisable for the courts hearing these cases to appoint a common special master and adopt other common pretrial orders.

IT IS THEREFORE ORDERED that the motion for centralization of the actions listed on Schedule A is denied.

PANEL ON MULTIDISTRICT LITIGATION



Nathaniel M. Gorton  
Acting Chair

Matthew F. Kennelly  
Roger T. Benitez  
Madeline Cox Arleo

David C. Norton  
Dale A. Kimball

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<sup>4</sup> In opposition to centralization, defendants stress how voluntary cooperation among the parties and counsel will be an adequate alternative to centralization. The Panel expects from such arguments that counsel's conduct will result in meaningful cooperation and concrete actions that help streamline the litigation of these cases going forward in each district.

<sup>5</sup> *See, e.g.,* Jt. Coordination Order, *In re Gen. Motors LLC Ignition Switch Litig.*, C.A. No. 1:14-md-2543 (S.D.N.Y. Sept. 24, 2014), Dkt. No. 315.

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**SCHEDULE A**

Northern District of New York

DANIELS v. MANDALAYWALA, ET AL., C.A. No. 9:23-00983  
BRIGLIN v. DINELLO, ET AL., C.A. No. 9:23-01001  
HERMAN v. DINELLO, ET AL., C.A. No. 9:23-01002  
VASQUEZ v. BURKE, ET AL., C.A. No. 9:23-01003

Southern District of New York

ALLAH v. DINELLO, ET AL., C.A. No. 1:23-03286  
JACKS v. MUELLER, ET AL., C.A. No. 1:23-03288  
ALSTON v. MUELLER, ET AL., C.A. No. 1:23-03290  
PEREZ v. DINELLO, ET AL., C.A. No. 1:23-03300  
REYES v. DINELLO, ET AL., C.A. No. 1:23-03315  
BERNARD v. DINELLO, ET AL., C.A. No. 1:23-03323  
CRICHLOW v. DINELLO, ET AL., C.A. No. 1:23-03386  
DUNBAR v. HAMMER, ET AL., C.A. No. 1:23-03391  
FEDER v. DINELLO, ET AL., C.A. No. 1:23-03392  
FEOLA v. MUELLER, ET AL., C.A. No. 1:23-03393  
FRATESCHI v. HAMMER, ET AL., C.A. No. 1:23-03394  
HALE v. MUELLER, ET AL., C.A. No. 1:23-03396  
WILKERSON v. HAMMER, ET AL., C.A. No. 1:23-03397  
VAN GUILDER v. MUELLER, ET AL., C.A. No. 1:23-03398  
LOCENITT v. DINELLO, ET AL., C.A. No. 1:23-03399  
MADISON v. RUIZ, ET AL., C.A. No. 1:23-03438  
MARCIAL v. MUELLER, ET AL., C.A. No. 1:23-03455  
MILLER v. HAMMER, ET AL., C.A. No. 1:23-03462  
ORTIZ v. DINELLO, ET AL., C.A. No. 1:23-03547  
JOHNSON v. DINELLO, ET AL., C.A. No. 1:23-03553  
RIVERA v. MUELLER, ET AL., C.A. No. 1:23-03579  
JACOBS v. MUELLER, ET AL., C.A. No. 1:23-03606  
OLEMAN v. HAMMER, ET AL., C.A. No. 1:23-03607  
WILLIAMS v. DINELLO, ET AL., C.A. No. 1:23-03608  
RIVERA v. HAMMER, ET AL., C.A. No. 1:23-03700  
ROSADO v. MUELLER, ET AL., C.A. No. 1:23-03718  
ALLEN v. KOENIGSMANN, ET AL., C.A. No. 1:23-05651  
DANIELS v. MUELLER, ET AL., C.A. No. 1:23-05654  
DICKINSON v. MUELLER, ET AL., C.A. No. 1:23-05657

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DOCKERY v. DINELLO, ET AL., C.A. No. 1:23-05658  
GRADIA v. DINELLO, ET AL., C.A. No. 1:23-05660  
HERNANDEZ v. MUELLER, ET AL., C.A. No. 1:23-05661  
KNIGHT v. LEE, C.A. No. 1:23-05662  
MATHIS v. MUELLER, ET AL., C.A. No. 1:23-05663  
PRITCHETT v. DINELLO, ET AL., C.A. No. 1:23-05664  
RAHMAN v. LEE, C.A. No. 1:23-05665  
RIVERA-CRUZ v. MUELLER, ET AL., C.A. No. 1:23-05667  
STEWART v. MUELLER, ET AL., C.A. No. 1:23-05668  
PINE v. HAMMER, ET AL., C.A. No. 1:23-07148  
DIGGS v. DINELLO, ET AL., C.A. No. 1:23-07149  
WINDLEY v. HAMMER, ET AL., C.A. No. 1:23-07151  
LORANDOS v. MUELLER, ET AL., C.A. No. 1:23-07369  
BERNARD v. MUELLER, ET AL., C.A. No. 1:23-07375  
WILLIAMS v. KARANDY, C.A. No. 1:23-07376

Western District of New York

BURGOS v. OTT, ET AL., C.A. No. 6:23-06390  
FIRST v. DINELLO, ET AL., C.A. No. 6:23-06391  
JONES v. SHAHID, ET AL., C.A. No. 6:23-06457  
PIVETZ v. DINELLO, ET AL., C.A. No. 6:23-06458  
RAU v. WRIGHT, ET AL., C.A. No. 6:23-06459