

Lawsuit against New Hanover County Schools could get 'exceptional case' designation

By Benjamin Schachtman - January 21, 2020



Earlier this month, parties on both sides of the lawsuit against New Hanover County Schools agreed the case was complicated enough to warrant a dedicated judge. (Port City Daily photo / Benjamin Schachtman)

WILMINGTON — The complicated nature of a civil suit against New Hanover County Schools, top administrators, and former teacher and convicted sex offender Michael Kelly may lead the courts to designate the case as 'complex' and assign it a dedicated judge.

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The lawsuit, filed in July, alleges that top administrators including Superintendent Dr. Tim Markley and former Deputy Superintendent Dr. Rick Holliday, repeatedly failed to act on information about potential wrongdoing by Kelly; further, the suit explicitly alleges that Holliday was aware for decades of Kelly's inappropriate and criminal behavior and did not act to prevent that behavior from continuing. The suit also alleges Markley was negligent in supervising Holliday.

A complicated case

The case is complicated, with multiple plaintiffs — a number that could increase. Last year, North Carolina passed a law increasing the length of time victims of sexual abuse have to file civil suits. Current and former students who allege abuse by Kelly during any time during his 26-year career could join the current six plaintiffs; if a judge grants the lawsuit against New Hanover County Schools (NCHS) class-action status, more could be included as well.

Each plaintiff shares what attorneys call 'common questions,' but also has individual aspects to their case, adding to the complexity of the case.

In addition to numerous plaintiffs and defendants, there are also numerous other agencies involved; the case will likely include investigatory material, documents, and testimony from the private law firm hired by NHCS, the New Hanover County Sheriff's Office, District Attorney Ben David's office, the North Carolina Attorney General's Office, and the State Bureau of Investigation.

The process of discovery — assembling these documents and materials — for a period covering a quarter-century is bound to be extremely challenging.

The case's complex nature is one thing both sides can agree on. Early this month, attorneys for both NHCS and Holliday (who is not being represented by NHCS's legal team) consented to a motion to designate the lawsuit an 'exceptional case.'

Kelly, however, did not consent; according to the most recent motion in Superior Court, no attorney for Kelly has made an appearance and Kelly has not responded to any attempts by the plaintiff's attorneys to contact him. Kelly, who currently serving a 31-year sentence at the Pasquotank Correctional Institution in Elizabeth City, has also not responded to requests for an interview following his conviction and sentencing last year.

Creating an 'exceptional case'

In North Carolina, cases are handled by a rotating staff of judges. That means that a complicated case, especially one that lasts a year or more, would likely be argued in front of multiple judges. While each judge can review prior motions, orders, and hearings, with a complicated case that process can become increasingly challenging.

For that reason, Rule 2.1 (a) cases allow the Chief Justice of the North Carolina Supreme Court to assign a dedicated judge to oversee a case from start to finish. A **similar designation was used for the complicated lawsuit over H2GO's assets**, which also involved multiple parties, complicated claims, and large amounts of documentation produced during discovery. Although they are sometimes referred to as 'complex business cases,' Rule 2.1 cases don't necessarily have to involve business-related lawsuits, and also include a broader category of 'exceptional civil cases'

In order to create an exception case, parties in the case petition the senior resident Superior Court judge — in New Hanover and Pender counties, that's Judge Phyllis Gorham.

If Gorham agrees with the argument laid out in the petition, she will take the case to the State Supreme Court; there, Chief Justice Cheri Beasley will decide if the case meets the requirements and, if so, she will assign a special judge.

That judge will, in essence, shepherd the legal process for the life of the case.

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