

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Paiva v. Salisbury

Paiva · No. C.A. No. 69-04192JJM-PAS · Decided April 1, 2026

SUMMARY

The United States District Court for the District of Rhode Island denied absent class member Joseph W. Shepard’s motion to enforce class counsel’s duties under Federal Rule of Civil Procedure 23(g). The court held that class counsel were adequately and diligently representing the class, had appropriately communicated with class members consistent with mediation confidentiality, and were not required to provide individualized representation or undertake the requested investigations.

CASE DETAILS

COURT	United States District Court for the District of Rhode Island
WRITING FOR THE COURT	Patricia A. Sullivan
JURISDICTION	United States District Court for the District of Rhode Island
DECIDED	April 1, 2026
DOCKET	C.A. No. 69-04192JJM-PAS
DISPOSITION	denied
PROCEDURAL POSTURE	Absent class member Joseph W. Shepard moved to enforce class counsel's duties under Federal Rule of Civil Procedure 23(g) and sought ancillary relief. The motion was referred to the United States Magistrate Judge for determination.
STANDARD OF REVIEW	The court independently monitored whether class counsel fairly and adequately represented the class under Federal Rule of Civil Procedure 23(g), while considering the court's authority under Rule 23(d)(1)(B) to issue protective orders for class members.
PRECEDENTIAL VALUE	unpublished
PARTIES	Richard Paiva, as successor to Joseph Morris, individually and on behalf of all others similarly situated v. Wayne Salisbury, in his capacity as the Director of the State of Rhode Island Department of Corrections, as successor to Anthony Trivisono

TOPICS

class actions

civil procedure

mediation

civil rights

section 1983

PRACTICE AREAS

class actions

prisoner civil rights

civil procedure

mediation

QUESTIONS PRESENTED

1. Whether class counsel violated Federal Rule of Civil Procedure 23(g) by allegedly failing to communicate adequately with an absent class member and failing to address his individualized complaints.
2. Whether the court should order class counsel to provide individualized assistance, investigate Shepard's allegations, recuse themselves, or otherwise impose additional duties under Federal Rules of Civil Procedure 23(g) and 23(d).

HOLDINGS

1. Rule 23(g) requires class counsel to fairly and adequately represent the class as a whole, but it does not give an absent class member the same communication, control, or individualized representation rights as a separately represented client. Class counsel may appropriately limit communications and decline individualized representation when necessary to maintain focus on the class and preserve confidential mediation.
2. Shepard was not entitled to an order requiring class counsel to confirm his class membership, respond to all communications, investigate alleged violations of an interim order, provide individualized assistance, recuse themselves, or terminate mediation.

KEY QUOTATIONS

"Absent class members cannot instruct the class representative or class counsel as to how to prosecute the action; nor do they have a right to "fire" class counsel." (Section II)

"I therefore find that there is no need for the Court to issue further orders to protect class members pursuant to Fed. R. Civ. P. 23(d) or (g)." (Section III)

"Based on the foregoing, the Court DENIES Mr. Shepard's motion to enforce duties of Fed. R. Civ. P. 23(g) Class Counsel." (Section IV)

FACTUAL BACKGROUND

The action is a long-running prisoner class action concerning inmate discipline and conditions of confinement at Rhode Island's Adult Correctional Institution. After the case was reactivated, the court appointed successor class counsel and referred the matter to confidential court-annexed mediation, which resulted in voluntary policy changes including a thirty-day limit on punitive segregation and revised disciplinary-hearing procedures. Absent class member Joseph W. Shepard claimed that counsel failed to communicate with him, provide updates, address alleged violations of an interim order, or assist with his individualized constitutional and retaliation complaints,

while counsel represented that they had communicated with him repeatedly and appropriately limited communications because of mediation confidentiality and the class-wide nature of their duties.

PROCEDURAL HISTORY

The underlying class action was filed in 1969 on behalf of prisoners at Rhode Island's Adult Correctional Institution and a subclass of prisoners in the behavioral control unit. The case resulted in a settlement and permanent injunction, was later reactivated by the First Circuit, and Richard Paiva was permitted to intervene as successor plaintiff and class representative in 2019, with Lynette Labinger and Sonja Deyoe appointed as successor class counsel. Shepard, an absent class member, alleged that class counsel failed to communicate adequately, address his individualized complaints, and fulfill Rule 23(g) duties; the court denied his motion after finding counsel's representation diligent, fair, and adequate.

DISPOSITION

denied

CASES CITED

- *Morris v. Travisono*, 310 F. Supp. 857, 859 (D.R.I. 1970)
- *Paiva v. Rhode Island Department of Corrections*, 498 F. Supp. 3d 277, 278-79 (D.R.I. 2020)
- *In re Richard Lee Paiva*, No. 17-1511 (1st Cir. Dec. 21, 2018)
- *In re Atlantic Pipe Corp.*, 304 F.3d 135, 145 (1st Cir. 2002)
- *Tuli v. Brigham & Women's Hospital, Inc.*, 2009 WL 10693567, at *1 n.2 (D. Mass. June 8, 2009), *aff'd sub nom. Tuli v. Brigham & Women's Hosp.*, 656 F.3d 33 (1st Cir. 2011)
- *Paiva v. Salisbury*, 2026 WL 523781 (D.R.I. Feb. 25, 2026)
- *Paiva v. Salisbury*, 2025 WL 2886992, at *1-3 (D.R.I. Oct. 10, 2025), *adopted*, 2025 WL 3025585 (D.R.I. Oct. 29, 2025)
- *Paiva v. Salisbury*, 2025 WL 369274, at *1-3 (D.R.I. Feb. 3, 2025)
- *Liberty v. Rhode Island Department of Corrections*, 2023 WL 6172253, at *1 (D.R.I. Sept. 22, 2023)
- *In re Pharmaceutical Industry Average Wholesale Price Litigation*, 588 F.3d 24, 41 (1st Cir. 2009)
- *Mongue v. Wheatleigh Corp.*, 165 F.4th 49, 58 (1st Cir. 2026)
- *C.P. v. New Jersey Department of Education*, 2023 WL 7103381, at *1 (D.N.J. Oct. 27, 2023)
- *LaCross v. Knight Transportation Inc.*, 2024 WL 250367, at *2 (D. Ariz. Jan. 23, 2024)
- *Walsh v. Great Atlantic & Pacific Tea Co.*, 726 F.2d 956, 964 (3d Cir. 1984)
- *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991)
- *In re Community Bank of North Virginia*, 418 F.3d 277, 313 (3d Cir. 2005)
- *Victorino v. FCA US LLC*, 322 F.R.D. 403, 409 (S.D. Cal. 2017)
- *Fulco v. Continental Cablevision, Inc.*, 789 F. Supp. 45, 47 (D. Mass. 1992)
- *Gulf Oil Co. v. Bernard*, 452 U.S. 89 (1981)

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