

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 76-6068-CIV-HOEVELER

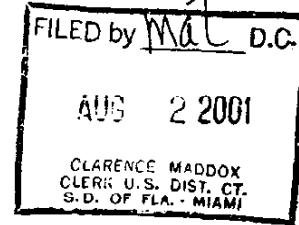
OLLIE CARRUTHERS, et al.,

Plaintiffs,

v.

KEN JENNE, et al.,

Defendants.



**ORDER SETTING EVIDENTIARY HEARING
AND ADDRESSING RELATED MOTIONS**

THIS CAUSE comes before the Court upon Plaintiffs' Motion for an Evidentiary Hearing, Plaintiffs' Motion to Appoint Expert(s), Plaintiffs' Motion for a Scheduling Order, Plaintiffs' Motion for Clarification and Continuance, all filed on July 2, 2001, and Defendants' Motion for Protective Order, filed on July 18, 2001. At the status conference held on July 20, 2001, the parties were given an opportunity to address the Court regarding these motions. Having reviewed them in light of oral argument, and otherwise being advised in chambers, the Court enters the following Order.

I. Plaintiffs' Motion for Evidentiary Hearing

The Defendants concede that before this Court can act on the Defendants' Joint Motion to Terminate/Dissolve Consent Decree it must conduct an evidentiary hearing.

E.g., Loyd v. AL Dep't of Corr., 176 F.3d 1336, 1336 (11th Cir. 1999); see also (Def. Sheriff's Memo. in Opp. to Pla. Mot. for Evid. Hearing, at 1). The Court agrees. Plaintiffs "must be given the opportunity to challenge or to supplement the findings of the monitor and to present evidence concerning the scope of the challenged relief and whether there are 'current and ongoing' violations of federal rights at the prison." Loyd, 176 F.3d at 1342. Thus an evidentiary hearing shall be held to determine whether there are current and ongoing violations of federal rights sufficient to support the continuation of prospective relief, and if so, whether the prospective satisfies the provisions of the Prison Litigation Reform Act of 1995. See 18 U.S.C. § 3626(b)(3) (requiring the relief to go no further than necessary to correct the violation, be narrowly drawn, and the least intrusive means to correct the violation). See Cason v. Seckinger, 231 F.3d 777, 785 (11th Cir. 2000).

II. Plaintiffs' Motion to Appoint Expert(s)

The Plaintiffs' Motion to Appoint an Expert shall also be GRANTED. Defendants have retained Gary DeLand as a "consultant" in this matter. Although Mr. DeLand has not been designated an "expert," he has been offered as such by the Defendants. (See Sherriff's Memo. in Opp. to Pla. Mot. to Appt. Expert(s), at 3). Mr. DeLand's credentials are substantial and impressive, however, his role as a "consultant" for the Defendant and acknowledged history of representing other defendants create an appearance of partiality in this matter. Therefore, pursuant to Rule 706 of the Federal Rules of Evidence the Court shall appoint an expert whom the parties will be given an opportunity to jointly select. Failing that, the parties may each submit the names and credentials of two candidates, and the Court will select its own expert.

The Court recognizes its discretion to apportion the costs of the expert among the parties. See Fed. R. Evid. 706(b). The Plaintiffs have represented to the Court that they are indigent and have been unable to locate an expert willing to testify pro bono. Therefore, to the extent that any remaining fine monies levied and collected in this action are still available in the Court Registry, the court-appointed expert shall be compensated from this fund upon proper motion from the parties. The remainder of the expenses shall be borne by the Defendants, whose conduct occasioned these proceedings. See McKinney v. Anderson, 924 F.2d 1500, 1511 (9th Cir.) (permitting district court to apportion all costs to one side), vacated on other grounds, 502 U.S. 903 (1991).

III. Plaintiffs' Motion for Scheduling Order

The Plaintiffs have also requested that this Court enter a scheduling order to "establish the timing and sequence of necessary discovery prior to any evidentiary matters being heard." (Pla. Memo. in Supp. of Mot. for Sched. Ord., at 4). At this time, it is not clear to the Court whether the Defendants wish to retain their own "expert," or instead rely on the court-appointed expert. Although the Defendants "oppose entry of a scheduling order which formalizes a series of pre-hearing tasks, and deadlines for the completion of those tasks," (Def. Memo. in Opp. to Pla. Mot. for Sched. Ord., at 3), some deadlines may be in order. For example, a deadline for the submission of expert reports and discovery cutoff date might facilitate the timely resolution of the matter at hand. Therefore, Plaintiffs' Motion for the Entry Scheduling Order shall also be GRANTED. The parties have fifteen (15) days to submit a joint scheduling report and proposed scheduling order.

IV. Defendants' Motion for Protective Order

Defendants complain that "the (Plaintiffs') Request for production is hopelessly overbroad in its scope." Unfortunately, the Defendants' Motion is also overbroad. Rule 34 of the Federal Rules of Civil Procedure requires that "[i]f objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts." Fed. R. Civ. P. 34. Similarly, the local rules require that objections to requests to produce "state with specificity all grounds." S.D. Fla. L.R. 26.1.G.3(a) The Defendants fail to individually identify a single request to which they object and state a basis for that objection. Therefore Defendants' Motion for Protective Order is DENIED WITHOUT PREJUDICE TO RENEW, should they choose to state with more particularity the portions of the Plaintiffs' Request for Production that they object to, and their legal grounds for so objecting.

V. Plaintiffs' Motion for Clarification and Continuance

Lastly, the Court considers Plaintiffs' Motion for Clarification and Continuance. As noted at the beginning of this Order, Plaintiffs' filed this Motion on July 2, 2001. In it they asked for a clarification of the issues to be addressed at the status conference scheduled for July 20, 2001 and asked for a continuation of the evidentiary hearing. The Defendants, however, did not file a response to this motion until July 18, 2001. Now that the conference has been concluded and the Court has set a date for the evidentiary hearing, Plaintiffs' Motion for Clarification and Continuance must be DENIED AS MOOT.

Therefore it is hereby

ORDERED AND ADJUDGED as follows:

(I) Plaintiffs' Motion for an Evidentiary Hearing is GRANTED. An evidentiary hearing on the Defendants' Motion to Terminate the Consent Decree shall be held on December 3, 2001, at 10:30 a.m./~~p.m.~~ before the undersigned on the ninth floor of the federal courthouse located at 301 North Miami, Avenue, Miami, Florida.

(II) Plaintiffs' Motion to Appoint Expert(s) is also GRANTED. The parties have thirty (30) days to agree on one neutral expert, excluding Mr. DeLand (whom the Defendants have already retained as a "consultant"). If the parties are unable to agree, they may each submit the names of two candidates and the Court will select its own expert.

The court-appointed expert shall be available to both parties for the limited purpose of investigating compliance with the requirements of the Prison Litigation Reform Act of 1995, 18 U.S.C. § 3626. In particular, the Court appointed expert shall examine the conditions in Defendants' jails to determine whether prospective relief remains necessary to correct *current or ongoing* violations of federal constitutional rights, and if so, make recommendations narrowly tailored to remedying the situation.

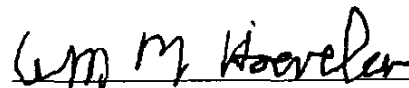
To the extent that any remaining fine monies levied and collected in this action are still available in the Court Registry, the court-appointed expert shall be compensated from this fund upon proper motion from the parties. The remainder of the expenses shall be borne by the Defendants, whose conduct occasioned these proceedings.

(III) Plaintiffs' Motion for a Scheduling Order is GRANTED. The parties have fifteen (15) days to submit a Joint Scheduling Report and proposed Scheduling Order pertaining to discovery deadlines for the pending evidentiary hearing on Defendants' Joint Motion to Terminate/Dissolve Consent Decree.

(IV) Defendants' Motion for a Protective Order is DENIED WITHOUT PREJUDICE TO RENEW should Defendants choose to state with more particularity the portions of the Plaintiffs' Request for Production that they object to, and their legal grounds for so objecting.

(V) Plaintiffs' Motion for Clarification and Continuance is DENIED AS MOOT.

DONE AND ORDERED in Chambers in Miami, this 1st day of August 2001.



William M. Hoeveler
Senior United States District Judge

Copies to:
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Stephanie W. Noe, Esq.
Bruce Jolly, Esq.
Mr. John Tiedeberg