

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA PROTECTION AND ADVOCACY)	
SERVICES COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	No. 1:08-CV-1317 DFH-JMS
)	
COMMISSIONER, INDIANA DEPARTMENT)	
OF CORRECTION,)	
)	
Defendant.)	

CASE MANAGEMENT PLAN

I. Parties and Representatives

A. Plaintiff

1. Indiana Protection and Advocacy Services Commission
2. Kenneth J. Falk, Gavin M. Rose, ACLU of Indiana, 1031 E. Washington St., Indianapolis, IN, 46202, 317/635-4059, kfalk@aclu-in.org, grose@aclu-in.org

David R. Smith, Karen Davis, Debra Dial, Gary Ricks, Indiana Protection and Advocacy Services, 4701 N. Keystone Ave., Suite 222, Indianapolis, IN 46205, 317/722-5555, drsmith@ipas.IN.gov, ktdavis@ipaswIN.gov, djdial@ipasINGov, gricks@ipaswIN.gov

B. Defendant

1. Commissioner, Indiana Department of Correction
2. David A. Arthur, Eric J. Beaver, Deputy Attorneys General, IGCS-5th Floor, 302 W. Washington St., Indianapolis, IN 46204, 317/232-6286 (Arthur), 232-5683 (Beaver), fax: 232-7979, David.Arthur@atg.in.gov, Eric.Beaver@atg.in.gov.

Counsel shall promptly file a notice with the Clerk if there is any change in this information.

II. Synopsis of Case

- A. Plaintiff, on behalf of its clients and constituents claims that the isolated confinement of seriously mentally ill prisoners, without adequate treatment, within the Department of Correction and the New Castle Correctional Facility violates the 8th amendment to the United States Constitution.
- B. Defendant contends that the plaintiff lacks standing to pursue claims on behalf of prisoners and that there is no case or controversy because this is a matter within and between Indiana state agencies. Defendant further contends that this case is or soon will be moot due to changes in the procedures and practices of the Department of Correction relating to care for mentally ill offenders.

III. Pretrial Pleadings and Disclosures

Defendant has filed a Motion to Dismiss which is fully briefed and pending before the trial court. Defendant contends that it is premature to impose any case management planning and any deadlines until and unless the Motion to Dismiss is resolved in plaintiff's favor. Defendant therefore objects to any and all deadlines. The below deadlines are entered into by the defendant with the understanding that his initial position is that no deadlines should be entered at all at this juncture. By agreeing to the deadlines, defendant does not waive his right to argue that no deadlines should be entered at this time.

- A. The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before May 1, 2009. This is 7 months from the Anchor Date.
- B. Plaintiff shall file preliminary witness and exhibit lists no later than 30 days following the trial court's resolution of the Motion to Dismiss (provided that the Motion is denied).
- C. Defendant shall file preliminary witness and exhibit lists no later than 60 days following the trial court's resolution of the Motion to Dismiss (provided that the Motion is denied).
- D. All motions for leave to amend the pleadings and or/or to join additional parties shall be filed no later than 90 days following the trial court's resolution of the Motion to Dismiss (provided that the Motion is denied).
- E. Plaintiff shall serve defendant (but not file with the Court) a settlement demand, no later than 5 months following the trial court's resolution of the Motion to Dismiss (provided that the Motion is denied). Defendant shall serve on the plaintiff (but not file with the Court) a response thereto within 60 days after receipt of the demand.

F. Plaintiff shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) no later than November 1, 2009. However, if plaintiff uses expert witness testimony at the summary judgment stage, such disclosures must be made no later than 60 days prior to the summary judgment deadline.

G. Defendant shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) within 30 days after plaintiff serves its expert witness disclosure; or, if none, defendant shall make its expert disclosure no later than December 1, 2009. However, if defendant uses expert testimony at the summary judgment stage, such disclosures must be made no later than 30 days prior to the summary judgment deadline.

H. Any party who wishes to limit or preclude expert testimony at trial shall file any such objection no later than 60 days before trial. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their responsive brief within the briefing schedule established by Local Rule 56.1.

I. All parties shall file and serve their final witness and exhibit lists on or before December 1, 2009.

J. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.

K. The parties will discuss preservation and disclosure of electronically stored discovery information after a ruling on the motion to dismiss, including a timetable for making the materials available to the opposing party. If agreement cannot be reached, either party may notify the Court and request a conference with the Magistrate Judge.

IV. Discovery¹ and Dispositive Motions

¹The term “completed,” as used in Section IV.B, means that counsel must serve their discovery requests in sufficient time to receive responses before this deadline. Counsel may not serve discovery requests within the 30-day period before this deadline unless they seek leave of Court to serve a belated request and show good cause for the same. In such event, the proposed belated discovery request shall be filed with the motion, and the opposing party will receive it with service of the motion but need not respond to the same until such time as the Court grants the motion.

The list of final witnesses shall include a brief synopsis of the expected testimony and counsel's certification that the witness has been interviewed and/or deposed.

Due to the time and expense involved in conducting expert witness depositions and other discovery, as well as preparing and resolving dispositive motions, the Court requires counsel to use the CMP as an opportunity to seriously explore whether this case is appropriate for such motions (including specifically motions for summary judgment), whether expert witnesses will be needed, and how long discovery should continue. To this end, counsel must select the track set forth below that they believe best suits this case. If the parties are unable to agree on a track, the parties must: (1) state this fact in the CMP where indicated below; (2) indicate which track each counsel believes is most appropriate; and (3) provide a brief statement supporting the reasons for the track each counsel believes is most appropriate. If the parties are unable to agree on a track, the Court will pick the track it finds most appropriate, based upon the contents of the CMP or, if necessary, after receiving additional input at an initial pretrial conference.

- A. Does any party believe that this case may be appropriate for summary judgment or other dispositive motion? If yes, the party(ies) that expect to file such a motion must provide a brief statement of the factual and/or legal basis for such a motion. **YES**

Plaintiff: Plaintiff does not believe that summary judgment is likely in this case. However, the uncontested facts may demonstrate that the segregated and isolated confinement of seriously mentally ill prisoners violates the 8th amendment.

Defendant: Defendant is making changes to the procedures applicable to care of mentally ill prisoners and although no constitutional violations are present, this action will be factually moot and subject to dismissal.

- B. Select the track that best suits this case:

Track 2: Dispositive motions are expected and shall be filed no later than 11 months following the trial court's resolution of the Motion to Dismiss (provided that the Motion is denied). Non-expert witness discovery and discovery relating to liability issues shall be completed no later than 10 months following the trial court's resolution of the Motion to Dismiss (provided that the Motion is denied). Expert witness discovery shall be completed no later than February 1, 2010.

V. Pre-Trial/Settlement Conferences

The plaintiff wishes to discuss with the Court at the initial pre-trial conference in this cause whether a settlement conference with the Magistrate Judge is warranted. The defendant believes that such a discussion is premature at this time in light of the rapidly evolving procedures for handling mentally ill offenders and impending factual mootness.

VI. Trial Date

The presumptive trial date is 18 months from the Anchor Date. This would be a trial date in April 2010. The trial would be by the Court and is anticipated to take at least two weeks.

VII. Referral to Magistrate Judge

The parties wish to discuss this during the conference with the Magistrate Judge.

VIII. Required Pre-Trial Preparation

A. TWO WEEKS BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. File a list of witnesses who are expected to be called to testify at trial.
2. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.
3. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.
4. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:
 - a. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged.); or
 - b. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.

5. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).
6. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.

B. ONE WEEK BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.
2. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.
3. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.
4. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

IX. Other Matters

There are 5 motions filed *pro se* by members of the purported class, docket nos. 26, 30, 33, 35, 40. The motions are fully briefed as neither counsel wishes to file a brief or motion in respect to the pending *pro se* motions.

The parties are not aware of any other issues at the current time.

For the plaintiff:

/s/ Kenneth J. Falk

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For the defendant:

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APPROVED AS AMENDED

DISAPPROVED;

11 months after
denial of motion to
dismiss

DISPOSITIVE MOTIONS DEADLINE

If the required conference under LR 37.1 does not resolve discovery issues that may arise, the parties are advised to request a phone status conference prior to filing any motion to compel or for protective order. Additionally, the parties are advised to not only number but to add a descriptive identifier for any exhibits which are electronically filed. For example, Exhibit 1 - affidavit of John Smith.

Upon approval, this Plan constitutes an Order of the Court. Failure to comply with an Order of the Court may result in sanctions for contempt, or as provided under Rule 16(f), to and including dismissal or default.

Approved and So Ordered.

04/09/2009