

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**RICHARD T. HEIT on behalf of** :  
**himself and all other persons** :  
**similarly situated.** :

**Plaintiff,** :

**v.** :

**Case No. 1:96-CV-800**

**MARJORIE VAN OCHTEN and** :  
**RICHARD STAPLETON, in** :  
**their official capacities.** :

**Hon. Richard Alan Enslen**

**Mag. Doyle A. Rowland**

**Defendants.** :

**CONSENT DECREE, ORDER AND JUDGMENT**

The Court, upon joint request of the parties for the approval and entry of a consent decree in the following form, having reviewed the parties' agreement and finding that it represents a fair and reasonable resolution of the issues, hereby approves the following consent decree, order and judgment and directs the entry thereof as follows:

**PROCEDURAL BACKGROUND**

1. This case is a class action filed under 42 U.S.C. § 1983 challenging policies and procedures with regard to the prison disciplinary misconduct hearings conducted by the hearing officers of the Hearing Division of the Office of Policy and Hearings of the Michigan Department of Corrections (MDOC). The Amended Class Action Complaint is dated April 14, 1998.

2. Jurisdiction over the subject matter of this litigation is conferred on this Court by 42 U.S.C. § 1343(3) in that this is a civil action brought under 42 U.S.C. § 1983 to redress deprivation of civil rights protected by law.

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3. On May 4, 1998 the court certified a class of plaintiffs including all present and future prisoners incarcerated by the Michigan Department of Corrections who have been or will be subjected to the prison disciplinary process.

4. The parties have engaged in settlement negotiations and have reached agreement as to the terms of the consent decree set forth herein.

### **AGREEMENTS**

1. The previous policy of maintaining and reviewing statistics regarding the number and percentage of misconduct hearings conducted by an individual hearing officer in which the prisoner is found not guilty shall be immediately discontinued.

2. No hearing officer shall henceforth be threatened with, or subjected to personnel disciplinary action, in whole or in part because of the number or percentage of the hearings conducted by the hearing officer that resulted in a finding other than guilty.

3. All MDOC staff other than the staff of the hearing division shall be prohibited from communicating with the staff of the hearing division regarding the determinations of a hearing officer made in connection with disposition of a prisoner disciplinary hearing, except that staff may request rehearing of a disciplinary hearing through the administrative process established by the MDOC.

4. Staff of the hearing division shall not communicate with MDOC staff outside the hearing division regarding the determinations of a hearing officer in connection with a prison disciplinary misconduct hearing, except as necessary in the rehearing process for such hearings.

5. Any communications, or attempted communications, by MDOC staff in violation of the agreements set forth above shall be documented in writing by staff of the hearing division.

6. The hearing officers shall make individual determinations of the credibility of staff and prisoner witnesses, including such determinations in those circumstances in which the testimony of a staff member and a prisoner are in conflict. Hearing officers shall not automatically credit the testimony of staff when staff and prisoner testimony are in conflict.

7. F. Warren Benton, Ph.D., shall conduct an investigation to determine whether plaintiff Richard Heit has suffered retaliation as a result of his legal activities in filing this lawsuit. If Dr. Benton finds that Mr. Heit has suffered retaliation as a result of filing this lawsuit, any misconduct reports and behavior reports found to have resulted from that retaliation shall be expunged.

8. If Dr. Benton determines that administrative reconsideration is appropriate and necessary for any matter in which the original determination was tainted by retaliatory acts, the defendants shall provide such administrative reconsideration to Mr. Heit.

9. Nothing in this consent decree shall preclude any individual member of the class from filing separate litigation seeking expungement of a finding of guilt in a prison disciplinary misconduct hearing.

10. Defendants shall provide, upon request, any information or documentation reasonably available to enable plaintiff to monitor compliance with the terms of this consent decree.

11. The parties stipulate, based on the entire record, that the relief provided for in this consent decree is narrowly drawn; extends no further than necessary to correct the violation of the Federal rights of the class as alleged in the Amended Complaint; is the least intrusive means necessary to correct the violation of the Federal rights; and does not violate Michigan law.

12. The terms and conditions of this consent decree, upon approval of the United States District Court, shall become a final judgment against defendants.

13. A copy of this consent decree shall be made available by defendants for inspection by any member of the class upon request.

14. The defendants shall bear the cost of the review by Dr. Benton provided for in paragraphs 7-8, supra.

15. In the event that the parties cannot reach agreement on the subject of attorneys' fees, the plaintiffs may request that the Court determine the amount of reasonable attorneys' fees to be awarded.

For Plaintiffs:

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Counsel for the Plaintiff Class

Dated: \_\_\_\_\_

For Defendants:

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Counsel for Defendants

Dated: \_\_\_\_\_