

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LINDA NUNN, et al.,

Plaintiffs,

Case No. 96-cv-71416-DT

v.

Honorable John Corbett O'Meara

MICHIGAN DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

U.S. DIST. COURT CLERK
EAST DIST. MICH.
ANN ARBOR
04 NOV 19 P 3:44
FILED

DEBORAH LABELLE (P31595)

Attorney for Plaintiffs
221 North Main Street, Suite 300
Telephone: 734.996.5620
Facsimile: 734.769.2196

FRANK MONTICELLO (P36693)

Assistant Attorney General
Attorney for Defendants
Corrections Division
P.O. Box 30217
Lansing, Michigan 48909
Telephone: 517.335.7021
Facsimile: 517.335.7157

**PLAINTIFFS' RESPONSE AND BRIEF IN OPPOSITION
TO DEFENDANTS' MOTION FOR FULL UNCONDITIONAL DISMISSAL**

Plaintiffs, by and through their counsel, oppose Defendants' motion for a full and unconditional dismissal of this case and in support of their opposition, Plaintiffs state as follows:

Plaintiffs are a joined group of thirty-one (31) women prisoners who filed this action alleging violations of their federal civil and constitutional rights as a result of

pervasive sexual assaults and sexually degrading treatment by male prison guards employed by the Michigan Department of Corrections.

After extensive pre-trial discovery and litigation, the parties entered into a settlement of Plaintiffs' damage claims in December of 1999, and a settlement of Plaintiffs' claims for injunctive relief on July 31, 2002.

The settlement of the injunctive relief came after six months of intensive negotiations. These negotiations had reached a near impasse until Defendants agreed to two central components of Plaintiffs' demands for relief – the cessation of cross gender pat down searches of women prisoners and the removal of male staff from the women prisoners' sleeping and living areas. Defendants agreement to these changes in their policies and operations resulted in a July 31, 2000 settlement. Attachment 1, p. 5, Sections VIII and IX(A). As Defendants have complied fully with the cessation of cross gender pat downs, the unresolved issue involves Defendants agreement to remove male staff from the supervision of women in their housing areas and areas where women would be viewed nude or partially clothed.

The settlement agreement provided that Defendants' compliance with its terms was to be subject to a twelve month time period of monitoring by a joint independent monitor. The particular provision regarding removal of male staff from housing was subject to additional monitoring, after the filing of the final monitor's report, if the monitor deemed that Defendants had not fully complied but were making good faith

efforts toward compliance. Attachment 1, p. 12. Section XIII(B).

After the settlement agreement was entered, it became apparent that it would take substantially more time than the parties anticipated for Defendants' to reach compliance with the general terms of the settlement agreement. Rather than have the monitor file a timely report which would detail extensive noncompliance, the parties agreed to informally extend the time period for filing the monitor's reports. Therefore, the monitor's interim report was not filed until mid 2001 and the final report was filed on December 5, 2002 rather than in August 2001. Defs.' Motion to Dismiss, Exh. 3.

The December 5, 2002 final monitor report, further extended the monitoring period on Defendants' efforts to comply with the settlement provisions requiring removal of male staff from the womens' housing units for a year to monitor whether Defendants' achieved compliance with this provision.

The independent monitor has not filed any subsequent monitoring report on Defendants' compliance with this requirement of the settlement agreement, subsequent to the extension period. Thus the parties have not been advised by the monitor as to whether there has been full compliance or whether a *de novo* hearing on this issue should occur per the following settlement provision:

If the compliance expert declares that the MDOC has not substantially complied, the Court shall hold *de novo* hearings to make findings and issue orders regarding allegations of noncompliance.

Attachment 1, p. 12, Section B(10).

The reason the joint monitor has not issued a follow-up report on this issue is that Defendants' obligation to comply with this provision has essentially been held in abeyance. The reasons for holding this issue in abeyance is based on the recognition that Defendants' ability to comply fully with the terms of this portion of the agreement has been impacted by the filing of a federal case to enjoin this section of the settlement agreement.

Shortly after the parties in this case entered into a settlement, several guards filed suit against the Department of Corrections to enjoin the implementation of Section IX of the agreement which section provided for supervision of the womens' housing units to be limited to female staff. *Everson, et al. v. Michigan Department of Corrections, et al.*, 222 F. Supp. 864 (E.D. Mich. 2002). The Court granted a stay in *Everson* on September 28, 2000, which prevented Defendants from removing male staff from the women prisoners' housing units and prevented compliance with this term of the *Nunn* settlement agreement.

The *Nunn* Plaintiffs sought and were granted intervention in the *Everson* case to protect the terms of their settlement. After a bench trial, the Court in *Everson* issued a permanent injunction on August 8, 2002 which continued to prevent Defendants from fully complying with this provision in the *Nunn* settlement agreement. (Attachment 2). The Department and the Intervening *Nunn* Plaintiffs both filed an appeal of the *Everson* decision. The parties had oral argument on February 4, 2003. Several months

ago, the Sixth Circuit requested the entire District Court record to be forwarded to the Circuit and the parties are awaiting a decision.

The joint monitor recognized that the stay, issued in the *Everson* case, prevented Defendants from fully complying with Section IX of the settlement agreement. The *Nunn* final compliance report provides that:

The MDOC has continued to make a good faith effort to limit the assignment of staff in facility housing units to female offers. Their position in the *Everson* case, cited above, is consisted with that announced intention. Since *Everson* is currently on appeal to the Sixth Circuit, the MDOC's efforts are ongoing and, therefore the monitoring will be extended as to this issue only for not more than two additional six month period.

The monitor extended the monitoring period in light of *Everson* with the understanding that an evaluation of compliance with this term could not be made until resolution of the pending appeal in *Everson*. The monitor did not actively monitor this matter in the twelve months following the final report, as the issue was stayed and monitoring was effectively held in abeyance pending a decision in *Everson*.

Settlement agreements are essentially contracts, enforced under the basic terms and principles of contract law. Full performance of the terms of the contract have not yet been met, as the Sixth Circuit is currently contemplating the legality of one term in the agreement. If the Sixth Circuit Court deems the clause legal and enforceable, the MDOC is obligated to perform under the terms of the settlement agreement. Plaintiffs' are entitled to this Court's continuing jurisdiction in the event Defendants' fail to take

appropriate steps to comply.

Dismissal of the entire case at this time is unwarranted for several reasons:

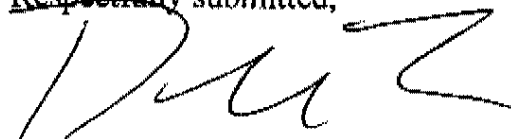
1) The joint monitor has not issued a final report on Section IX(A) as it was understood that monitoring was held in abeyance on this issue during the pendency of *Everson*¹; 2) Defendants' motion argues that the agreed upon monitoring period has expired, irregardless of the fact that monitoring was held in abeyance on this provision during almost the entire monitoring period. Further, Defendants' argument that the monitoring period is over, cannot be converted into a basis for dismissal of this court's entire jurisdiction where determination of Defendants' compliance with a term of the settlement agreement remains outstanding and there exists the possibility of *de novo* hearings before this court, should Defendants fail to comply. Dismissal of this case prior to a ruling in *Everson* is unwarranted; 3) There is no prejudice to the parties to maintaining this matter on the court's inactive docket to await the imminent decision of the Sixth Circuit in *Everson*, this ruling will clarify whether Plaintiffs may enforce Defendants' agreed upon obligation or whether the obligation is legally unenforceable. Alternatively, Plaintiffs would be significantly prejudiced by a "full, unconditional

¹ The continuing need to address this provision is evidenced by the number of reported assaults on women prisoners since the stay was issued in *Everson*. Since the stay in *Everson*, over one hundred (100) women prisoners have reported new sexual assaults or ongoing sexual degrading and harassing treatment. There have been at least four (4) criminal convictions of male staff for sexual assaults, that occurred after the stay was issued, and warrants have been requested as a result of four (4) additional criminal sexual assaults on women prisoners by the male guards employed to supervise them.

dismissal" of their case where there has been not opportunity for monitoring and enforcement of a crucial settlement term.

WHEREFORE, for the foregoing reasons, Plaintiffs request that Defendants' motion for a full unconditional dismissal of this case be denied without prejudice.

Respectfully submitted,



DEBORAH LABELLE (P31595)
Attorney for Plaintiffs
221 North Main Street, Suite 300
Ann Arbor, MI 48104
Telephone: 734.996.5620
Facsimile: 734.769.2196

DATED: November 19, 2004

MOLLY H. RENO (P28997)
Attorney for Plaintiffs
221 North Main Street, Suite 300
Ann Arbor, MI 48104
Telephone: 734.769.0077
Facsimile: 734.769.2196

RICHARD SOBLE (P20766)
Attorney for Plaintiffs
221 North Main Street, Suite 200
Ann Arbor, MI 48104
Telephone: 734.996.5600



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LINDA NUNN, *et al*,

Plaintiffs,

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS, *et al*,

Defendants.

Case No. 96-CV-71416-DT

Hon. John Corbett O'Meara

Magistrate Marc L. Goldman

SETTLEMENT AGREEMENT REGARDING
INJUNCTIVE AND DECLARATORY RELIEF

I. DEFINITIONS

- A. "Prisoner" means any women prisoner under the jurisdiction of the Michigan Department of Corrections housed in a facility. Women prisoners housed in a center are also covered by the provisions of this agreement using the term "prisoner," except for Sections IX(A and C), X(A)(3)(b), and except as provided by Section XI(I).
- B. "Facility" means any prison, institution or camp housing women prisoners. "Center" means any community corrections center or technical rule violation center housing women prisoners. The term "Housing Unit" includes segregation units at facilities.
- C. "Staff" means correctional officers, maintenance workers, kitchen workers, teachers, counselors, supervisors, administrators, and any other person who has contact with prisoners as a regular and routine part of their employment, by MDOC or as a full time contractual worker assigned to a facility or a center.
- D. "Sexual Misconduct" means staff engaging in, attempting to engage in or aiding and abetting: (1) a sexual act with any prisoner; (2) the touching of a prisoner, either directly or through clothing, of the genitalia, anus, groin, breasts, inner thighs or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person; (3) prohibited physical contact including fondling or kissing. (4) indecent exposure or other indecent sexual behavior by a staff person in the presence of a prisoner.

- E. "Sexual Harassment" means sexual advances, requests for sexual favors, and other verbal or non-verbal communication of a sexual nature. Sexual harassment also includes verbal conduct of a gender-related nature intended to humiliate, harass degrade or arouse.
- F. "Retaliation" means harmful action, or threat of such action taken by staff against a prisoner because of that prisoner's resistance to, complaint regarding, or cooperation in an investigation of sexual misconduct, sexual harassment, or other conduct prohibited by this agreement.

II. POLICIES AND PROCEDURES PROHIBITING SEXUAL MISCONDUCT

Within 120 days of execution of this agreement, the MDOC shall develop and maintain one policy which implements prohibitions against sexual misconduct, sexual harassment, and retaliation, and identifies the reporting and complaint mechanisms, the investigation procedures and discipline for sexual misconduct, sexual harassment, and retaliation, included in this agreement. The policy shall also identify the counseling and education concerning sexual misconduct, sexual harassment and retaliation, to be provided to prisoners pursuant to this agreement. The policy may refer to other policies as a means of setting forth this information.

III. SCREENING OF JOB APPLICANTS AND CURRENT STAFF

- A. Prior to staff being assigned to a position involving contact with prisoners, MDOC will ensure that the following has occurred: drug abuse screening; investigate information in employment applications; perform LEIN checks on criminal history and personal protective orders for domestic violence; review National Crime Information Center records; investigate whether applicants have ever worked in a correctional setting and, if so, whether they were the subject of allegations of sexual misconduct, sexual harassment, or retaliation and, if so, whether any such allegations were sustained.
- B. MDOC shall perform LEIN checks on criminal history and personal protective orders for domestic violence for all staff every five (5) years.
- C. The MDOC shall develop written procedures for employment and placement of staff in contact positions with prisoners consistent with MDOC's policies regarding prevention of sexual misconduct against women prisoners, based upon the results of the screening performed pursuant to this section.

IV. STAFF TRAINING

A. Basic Training on Working with Prisoners

1. Training on issues relating to the supervision of prisoners shall be provided to all staff. The frequency and level of training provided to part time and full time contractual staff shall be in accordance with MDOC training policies and practices.
2. The existing curriculum and training materials for facility staff shall be reviewed for adequacy and effectiveness by an independent consultant agreed to by the parties.
3. The consultant shall have the opportunity to observe the training which occurs during the compliance period, and if necessary, make recommendations for changes or additions to the training materials, methodology or implementation of training. The compliance expert shall review the consultant's recommendations in accordance with Section XIII(B)(6).
4. Any recommended training, or portion thereof, which has not been rejected by the compliance expert and which has been designated by the consultant as critical will be provided to current staff not more than ninety (90) days after the recommendation is made, and to any transferring staff immediately upon their assignment to a facility. All other recommendations which have not been rejected pursuant to section IV(A) will be incorporated into the next annual in-service training program.

B. Investigator Training

1. The existing curriculum and training materials for facility staff responsible for investigating allegations of sexual misconduct, sexual harassment, or retaliation shall be reviewed for adequacy and effectiveness by an independent consultant agreed to by the parties.
2. The consultant shall have the opportunity to observe the training which occurs during the compliance period and, if necessary, make recommendations for changes or additions to the training materials, methodology or implementation of training. The compliance expert shall review the consultant's recommendations in accordance with Section XIII(B)(6).
3. Within one hundred and twenty (120) days from the date the recommendations are made, MDOC will train all current facility staff assigned to investigate allegations of sexual misconduct, sexual harassment or retaliation in accordance with the consultant's recommendations, or portion thereof, which have

not been rejected pursuant to section IV(B). Thereafter, staff who have not completed the recommended training will not be assigned to investigate such allegations.

4. Specialized training will be provided by an outside consultant with expertise in sexual assault intervention and crisis counseling for all facility Medical and Mental Health Staff who may receive a prisoner's complaint of sexual misconduct.

V. PRISONER EDUCATION

- A. The existing training materials for prisoner education, the brochure on sexual misconduct, and the sexual misconduct/harassment posters shall be reviewed for adequacy and effectiveness by an independent consultant agreed to by the parties.
- B. The consultant shall have the opportunity to observe the prisoner education training, and if necessary, make recommendations for changes or additions to the materials, training method or implementation. The consultant may obtain evaluations of existing prisoner education training from a reasonable sampling of prisoners and staff involved in the training. The compliance expert shall review the consultant's recommendations in accordance with Section XIII(B)(6).
- C. Any recommendation, or portion thereof, which has not been rejected by the compliance expert will be implemented within ninety (90) days after the recommendation is made. Thereafter, the recommendations which were not rejected by the compliance expert pursuant to section V (B) and (C) will be provided to all incoming prisoners as part of their orientation.
- E. All written material shall be available in Spanish as well as English. Reasonable measures shall be taken to ensure that other non-English speaking prisoners receive the same information.

VI. CONSULTANTS

- A. The consultant(s) identified in this agreement must be selected and contracted with before this agreement is executed.
- B. The parties shall have the right to meet jointly with the consultant(s).
- C. The consultant(s) shall submit recommendations regarding training and education materials, and postings, to the parties for review and comment.
- D. The costs of consultant(s) shall be borne by the MDOC.

VII. PREVENTION OF PROHIBITED CONDUCT

A. Minimization of One on One Situations

MDOC will maintain a written procedure that restricts male staff from being alone in one-on-one situations with prisoners at facilities and centers in areas not clearly visible to prisoners or other staff, with the following exceptions: emergencies, medical care, counseling, questioning during investigations, and reporting of confidential information.

B. Minimizations of Access to Secluded Areas

MDOC will maintain reasonable measures to eliminate prisoner access to secluded areas that are not necessary to the operation of the facility or center.

C. Sexual Misconduct Files

MDOC will use a tracking system to store allegations and information concerning, sexual misconduct, sexual harassment, and retaliation, whether substantiated or not. The tracking system will be searchable by, at a minimum, prisoner and staff name, type of prohibited behavior, date, facility, location and shift when the alleged incident occurred. Investigators and management will have access to this tracking system. The tracking system will be queried prior to accepting rehires. MDOC will conduct a quarterly search of this tracking system, and any staff shown in this review to have been the subject of more than two allegations of prohibited behavior within the past five years shall be subject to appropriate action, including, but not limited to a meeting with supervisors, a referral to an employee assistance program, retraining, or reassignment.

VIII. PAT DOWN SEARCHES

Absent emergency circumstances or a reasonable suspicion that the prisoner is in possession of contraband, pat down searches of prisoners will only be conducted by female corrections officers during an evaluation period of at least twelve months. Should the MDOC decide to resume the routine search of inmates by male officers, it will give plaintiffs' counsel thirty (30) days written notice.

IX. STAFFING ISSUES

- A. Consistent with the MDOC's announced intention to limit the assignment of staff in facility housing units to female officers, the MDOC will make a good faith effort to accomplish this objective during

the monitoring period. If such efforts are still ongoing at the end of the monitoring period, monitoring will be extended as to this issue only for not more than two additional six month periods.

- B. Any male entering a housing unit area in a facility or center shall announce his presence upon entering that area.
- C. All male staff must log in when they enter a housing unit or other area which keeps a log and any failure to log in shall be immediately reported to supervision.
- D. Except when a female officer is not available and immediate transport is deemed necessary at least one female officer will be assigned to transport a prisoner. On medical runs where it is probable the prisoner will be seen fully or partially nude, no male officer will remain in the examination room absent an emergency or a request from the examining physician.
- E. MDOC shall maintain locations at facilities and centers where prisoners may dress, shower and use the toilet without being observed by male staff.

X. FACILITATION OF PRISONER AND STAFF REPORTING OF ALLEGATIONS OF SEXUAL MISCONDUCT, SEXUAL HARASSMENT AND RETALIATION

- A. **Prisoner Reporting.** To encourage and facilitate the reporting of sexual misconduct, sexual harassment, retaliation and other conduct prohibited by this agreement, the MDOC agrees to provide the following:
 - 1. **Secure box.** At facilities and centers Prisoners shall have access to a secure locked box to make written reports of sexual misconduct, sexual harassment, or retaliation. The sole individuals who will have access to this box are the facility Inspector, the Warden, or the supervisor of the center. The contents of the box shall be reviewed on a daily basis by one of the above individuals and receipt acknowledged to the prisoner within four (4) days.
 - 2. **Confidentiality.** MDOC will take all reasonable steps to ensure that staff and prisoners preserve the confidentiality of staff and prisoners who report sexual misconduct, sexual harassment, retaliation and other conduct prohibited by this agreement. These steps include, but not limited to, warnings not to discuss investigations and disciplinary action against individuals who intentionally compromise the confidentiality of an

investigation. This does not preclude a prisoner from discussing the matter a) with counsel, b) for purposes of seeking treatment, or c) to ensure her own safety.

3. Retaliation

- a. Retaliation against a prisoner or staff for reporting staff misconduct is prohibited and subject to disciplinary action including termination;
- b. At each facility, a Review Committee shall be maintained consisting of the Grievance Coordinator, and at least one person in the position of ADW, Inspector or Deputy. Within five (5) days of receipt of an allegation of retaliation from a prisoner who has reported sexual misconduct or sexual harassment, the review committee shall begin review of the allegations including major and minor misconduct tickets issued against the prisoner. Factors which may be considered by the committee shall include, but are not limited to: 1) the connection between the staff who issued the ticket and the staff accused of sexual misconduct or sexual harassment; 2) any evidence or witness statements submitted by the prisoner alleging retaliation; 3) critical incident reports, grievances, kites and any other documents related to the prisoner's report of sexual misconduct or sexual harassment; 4) the prisoner's prior allegations of retaliation, 5) the amount of time between the reporting and the misconduct ticket; and 6) the prisoner's prior misconduct history.

Within ten (10) days, unless a one time extension of not more than two weeks is granted by the warden, the Review Committee shall report its findings to the warden with an explanation of the factual basis for its finding. The warden or designee shall promptly notify the prisoner of the review results. Findings or recommendations of the Review Committee are advisory only, and shall not have any bearing upon the hearings process for prisoner misconduct or grievances established by statute, administrative rule and policy directive unless the hearings officer, hearings administrator or grievance coordinator chooses to consider the information gathered. If the warden determines that there is evidence of retaliation, the warden shall take appropriate action which may include withdrawing a ticket pursuant to P.D. 03.03.105(K)(3), bringing it to the attention of the hearing officer or requesting a rehearing if the ticket has already been heard.

- c. Within 90 days after execution of this agreement, prisoners who received major misconduct tickets from staff convicted of criminal sexual conduct or against whom allegations of sexual misconduct or sexual harassment have been sustained, may present these tickets to MDOC for review if there is a written record that the prisoner asserted retaliation during the time the ticket was reviewed. If there is evidence that the major misconduct ticket was issued in retaliation for reporting staff sexual misconduct or sexual harassment, MDOC will request a rehearing on that major misconduct ticket. This provision applies only to major misconduct tickets that have been issued since March 1, 1991.
- d. Prisoners will not be involuntarily placed in protective custody simply because they reported conduct prohibited by this agreement.
- e. Prisoners will not be issued a misconduct for filing a complaint of sexual misconduct, sexual harassment, or retaliation which is not sustained, unless it is shown by a preponderance of evidence that the complaint was intentionally false.

XI. INVESTIGATION OF ALLEGATIONS

- A. Consistent with the investigative training set forth in Section IV.B. of this agreement, MDOC will conduct timely, complete, thorough, documented and uniform investigations of all allegations, however received (verbal report, kite, grievance, or letter) of sexual misconduct, sexual harassment, retaliation or conduct prohibited by policies established pursuant to this Agreement. MDOC investigators will continue to be trained consistent with Section IV(B) in conducting such investigations.
- B. MDOC will continue to refer allegations of sexual misconduct which, if true, constitute criminal acts to the Michigan State Police (MSP) for investigation. Regardless of whether the referral to the MSP results in a criminal prosecution, MDOC will continue its administrative investigation into the allegations, using a "preponderance of evidence" standard, and will take appropriate disciplinary action.
- C. MDOC investigators will conduct face-to-face interviews of all suspects, victims and eye witnesses to sexual misconduct and retaliation.
- D. Staff are required to cooperate in all investigations. MDOC will discipline, up to and including termination, staff who are accused of, witnessed, or have personal knowledge of sexual misconduct, sexual harassment, or retaliation and who refuse to cooperate.

- E. If a staff accused of sexual misconduct, sexual harassment or retaliation resigns, transfers, or is fired, the investigation will be completed in accordance with procedures developed pursuant to this agreement.
- F. MDOC will review the named Plaintiffs' allegations of sexual misconduct and sexual harassment which were not sustained if the Plaintiffs present new evidence supporting the allegations. The MDOC will review the Plaintiff's allegations of retaliation based on major misconduct tickets resulting in a guilty finding which were issued within one (1) year of the Plaintiff making a formal complaint of sexual misconduct or sexual harassment. In any review under this paragraph, the MDOC will apply the investigative standards to be implemented pursuant to this agreement. The allegations which Plaintiffs wish to have reviewed must be identified prior to execution of this agreement. If any reviewed allegations are sustained, MDOC will take appropriate action.
- G. MDOC will continue to remove staff accused of sexual misconduct from physical contact with prisoners until the investigation is concluded.
- H. MDOC will ensure that all investigations of staff accused of sexual misconduct, sexual harassment, retaliation or other conduct prohibited by this agreement, will include a search for prior allegations, investigations, or discipline against the accused staff.
- I. A prisoner who has reported sexual misconduct by staff shall be provided the opportunity to speak with a counselor trained in sexual assault and crisis intervention prior to being interviewed by a facility investigator or Internal Affairs. This prisoner shall have the right to have this counselor present during the investigation interview. This provision is not mandatory at centers if trained counselors are not available in that location.

XII. RESPONSE TO SUSTAINED MISCONDUCT

A. Staff Discipline

- 1. Staff who resign in lieu of discipline as a result of an investigation for sexual misconduct, sexual harassment, retaliation or other conduct prohibited by policies established pursuant to this agreement, or during an investigation which ultimately results in a sustained finding, will not be eligible for rehire by the MDOC.

2. Where allegations of such conduct are sustained, or the investigation reveals violations of work rules or other policies and procedures, appropriate disciplinary action shall be taken pursuant to MDOC policy and work rules.

B. Prisoner Psychological Services

1. MDOC will offer psychological services consistent with and identified in P.D. 04.06.180 to any prisoner subjected to or alleged to have been subject to sexual misconduct with staff. MDOC will offer psychological services consistent with and identified in P.D. 04.06.180 to any prisoner found by MDOC to have been subjected to, or to any prisoner who makes a credible allegation in a kite, grievance, or letter to management that she was subjected to sexual harassment.

XIII. COMPLIANCE/TERMINATION

A. Conditional Dismissal Under Rule 41(a).

Upon execution of this Settlement Agreement, the parties will jointly move the Court for entry of an Order conditionally dismissing this action, pursuant to Fed. R. Civ. P. 41(a) (2), conditional upon the MDOC achieving substantial compliance with its terms, and will attach this Settlement Agreement to such motion. The motion will request that the case be placed on the Court's inactive docket, though the Court shall retain jurisdiction over the case until a final dismissal.

B. Compliance Expert and Monitoring.

A compliance expert agreed to by the parties will have reasonable access to prisoners and staff, MDOC documents, information relating to implementation of this Settlement Agreement, and to allegations of sexual misconduct and other prohibited conduct addressed by this Settlement Agreement for the purpose of monitoring the MDOC's implementation of the Settlement Agreement. The Plaintiffs' attorneys will have reasonable access to information, including MDOC documents, relating to implementation of this Settlement Agreement, and to allegations of sexual misconduct and other prohibited conduct addressed by this Settlement Agreement for the purpose of monitoring the MDOC's implementation. The MDOC will fund the compliance expert's activities. The compliance expert's shall:

1. Review allegations of sexual misconduct, sexual harassment,

1. Review allegations of sexual misconduct, sexual harassment, retaliation and conduct prohibited under the agreement whether received directly from a prisoner or through reports, or grievances made to prison staff, investigators or administrators;
2. Determine whether alleged victims of sexual misconduct have been provided counseling, medical treatment, and mental health care in accordance with this agreement;
3. Determine whether prisoners have been treated in accordance with Department policy and the terms of this agreement during and subsequent to investigations;
4. Monitor or review investigations and procedures to be certain they comply with the requirements of this agreement;
5. Recommend the initiation or reopening of investigations or reviews of allegations arising during the monitoring period;
6. Review the recommendations of the consultants and reject recommendations that are unreasonable or contrary to the purposes of this agreement;
7. Prepare a report midway through the monitoring period based on the information collected informing the parties of his or her opinion of the MDOC's compliance with each of the terms of this Settlement Agreement, including identifying any deficiencies in compliance, and any recommendations for achieving substantial compliance;
8. Prepare a final report within 30 days of the end of the initial compliance period informing the parties of his or her opinion of the MDOC's compliance with each of the terms of this Settlement Agreement, including identifying any deficiencies in compliance;
9. The compliance expert's reports explaining his assessment of the MDOC's compliance with each provision of this agreement shall be provided to all parties. The expert must promptly notify the parties of any finding of non-compliance;

10. The parties shall have thirty (30) days to comment on each report. The parties shall meet within two (2) weeks of the submission of comments in an attempt to resolve disputes.

The compliance expert will conduct an initial on-site compliance monitoring tour of the facilities, and centers approximately 120 days after execution of this Settlement Agreement. The compliance expert will conduct a final on-site compliance monitoring tour of the facilities and centers 12 months after execution of this Settlement Agreement. Not more than three Plaintiffs' attorneys, three attorneys for the MDOC, and the MDOC Director or his designee may accompany the compliance expert on these tours. The compliance expert may conduct private meetings with staff and prisoners. Plaintiffs' attorneys may hold a group meeting with the named plaintiffs after the initial and final compliance monitoring tours. Neither the parties nor the compliance expert shall add provisions or expand the scope of this Settlement Agreement in any manner.

If the compliance expert determines that the MDOC has substantially complied with the terms of the Settlement Agreement, the parties will file a stipulation to dismiss. If the compliance expert determines that the MDOC has substantially complied, but good faith efforts are still ongoing under section IX(A), the parties will file a stipulation dismissing all but that remaining portion of the agreement. If the compliance expert declares that the MDOC has not substantially complied, the Court shall hold *de novo* hearings to make findings and issue orders regarding the allegations of non-compliance. Neither Plaintiffs nor the MDOC shall file a motion or suit for specific performance of the Settlement Agreement.

- C. Substantial Compliance. "Substantial Compliance" with the terms of the Settlement Agreement will fully satisfy the Settlement Agreement. Isolated and unintentional incidents will not constitute noncompliance.

XIV. COSTS

All parties shall bear their own costs and fees.

XV. INTEGRATION AND LIMITATION

This document is a final and complete expression of the agreement between the parties as to all claims for declaratory, equitable or injunctive relief. Nothing in this agreement shall be construed to require any party to act in violation of law or court order.

Dated: July 31, 2000

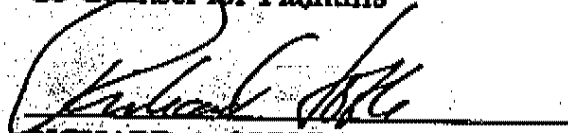
FOR THE PLAINTIFFS:



DEBORAH LABELLE (P31595)
Attorney for Plaintiffs
221 North Main Street, Suite 300
Ann Arbor, MI 48104
(734) 996-5620

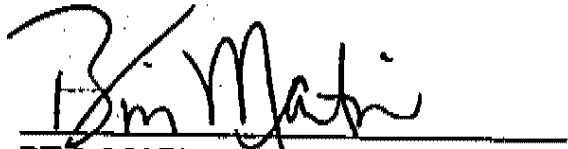


MOLLY H. RENO (P28997)
Co-Counsel for Plaintiffs

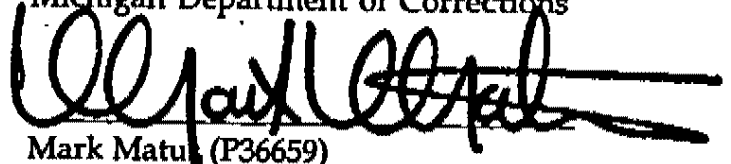


RICHARD A. SOBLE (P20766)
Co-counsel for Plaintiffs

FOR THE MDOC:



BILL MARTIN
Director
Michigan Department of Corrections



Mark Matu (P36659)
Assistant Attorney General
Corrections Division
P. O. Box 30217
Lansing, MI 48909
(517) 335-7021

2

AUG 9 2002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED

AUG 08 2002
CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

ROSLYN EVERSON, RANDY FOX,
STENNIS GEORGE, RICHARD IDEMUDIA,
and BRENDA L. SEBASTIAN, and a class
of all persons similarly situated,

Plaintiffs,

v.

CASE NO. 00-73133
HON. AVERN COHN
MAGISTRATE JUDGE CAPEL

STATE OF MICHIGAN DEPARTMENT
OF CORRECTIONS and BILL MARTIN,
individually and in his official capacity as
Director of the Michigan Department of
Corrections,

Defendants,

and

LINDA NUNN, et al, and
TRACY NEAL, et al

Intervening Defendants.

SACHS WALDMAN, Professional Corporation
By: Eileen Nowikowski (P 23405)
John R. Runyan (P 19763)
Attorneys for Plaintiffs
1000 Farmer Street
Detroit, Michigan 48226
(313) 965-3464

ASSISTANT ATTORNEY GENERAL
PUBLIC EMPLOYMENT &
ELECTIONS DIVISION
By: Marie Shamraj (P 44481)
Mark Matus (P 36559)
Attorneys for Defendants
P.O. Box 30212
Lansing, Michigan 48909
(517) 373-6434

DEBORAH A. LABELLE (P 31595)
MOLLY H. RENO (P 28997)
Attorney for Intervening Defendants
221 N. Main St., Suite 300
Ann Arbor, Michigan 48104
(734) 996-5620

**FINAL JUDGMENT GRANTING PERMANENT INJUNCTION AND DISMISSING
PLAINTIFFS' CLAIM UNDER 42 USC § 1983**

At a session of said Court held in
in the United States Courthouse on

PRESENT: HON. AVERN COHN

The above entitled matter having come before the Court upon the Stipulation of the parties to entry of a Final Judgment Granting Permanent Injunction and Dismissing Plaintiffs' Claim Under 42 USC § 1983; and

The Court being fully advised in the premises;

NOW THEN, IT IS ORDERED and ADJUDGED as follows:

1. For the reasons set forth in the Court's Decision entered on July 11, 2002, as corrected by ERRATA issued on July 12 and July 15, 2002, and based on the Declaratory Judgment entered on July 11, 2002, State Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them are permanently ENJOINED and RESTRAINED from implementing the plan to make gender-specific assignments to allow only female staff to hold Corrections Officer and Resident Unit Officer positions at Robert Scott, Western Wayne, and Camp Brighton Correctional Facilities and/or otherwise taking any action in furtherance thereof. However, consistent with the Court's July 11, 2002 Decision, nothing herein should be read to prohibit the Michigan Department of Corrections from making gender-specific task assignments, which includes the assignment of female officers to conduct pat-down searches and strip searches of female prisoners.

2. This injunction shall preserve the status quo in accord with the Court's Orders of October 18, 2000 and March 11, 2002, regarding the transport of female prisoners.
3. Plaintiffs' claim under 42 USC § 1983 in Count III of its First Amended Complaint against Defendant Bill Martin only is hereby DISMISSED with prejudice.
4. The parties' stipulation to entry of this Order shall not impede or impair the parties' right to appeal the Court's decisions, judgments or orders.

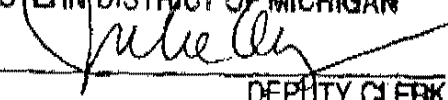
AVERN COHN

HONORABLE AVERN COHN
UNITED STATES DISTRICT JUDGE

A TRUE COPY

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

BY


DEPUTY CLERK