

UNITED STATES DISTRICT COURT
 DISTRICT OF MINNESOTA
 3-72-CV-73 (JMR/RLE)

Ronald W. Harvey et al.)
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) ORDER
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 Kenneth Schoen et al.)

On April 7, 1999, the Court adopted a Report and Recommendation issued by the Honorable Raymond L. Erickson, United States Magistrate Judge, applying the Prisoners' Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(b), and terminating the prison discipline-regulating consent decree from September, 1973, over 25 years ago. Plaintiffs now seek an injunction staying the implementation of the termination Order, pending appeal, pursuant to Rule 62(c) of the Federal Rules of Civil Procedure. The motion is granted.

The Court considers four factors in making this determination: (1) whether the applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the opposing party; and (4) the public interest. Oehrleins & Sons & Daughter v. Hennepin County, 927 F.

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Supp. 348, 350 (D. Minn. 1996) (citing Hilton v. Braunskill, 481 U.S. 770 (1987)). Each element is analyzed below.

Success on the Merits

"In considering this factor, the focus is not necessarily on whether the applicant has shown a likelihood that its appeal will be successful, although this is relevant, but whether the order involves the determination of substantial and novel legal questions." Oehrleins, 927 F. Supp. at 350. Obviously, the Court believes its Order is correct, but any order terminating a negotiated settlement will frequently be subject to substantial disagreement. Here, the PLRA is a relatively new statute, applied seldomly in the Eighth Circuit concerning termination of consent decrees. The Court rejected plaintiffs' arguments, but they are not trivial, and ought be aired in the Circuit Court without disturbing a practice which has been in place -- by agreement -- for nearly 26 years. Accordingly, this factor militates in favor of the requested injunction.

Irreparable Harm

Denying the requested stay would change the established practice of almost 26 years' duration -- defendants would now be able to conduct prison disciplinary hearings and punishments using different records and techniques than those agreed to in the

consent decree. On a practical basis, it would be impossible to restore decree-required records at a later date. Under the circumstances, the Court concludes this factor supports an injunction.

Harm to Other Parties

The decree in question has been functioning for over two decades. It was agreed to by the parties, and is the established function known to all the parties. The Court concludes that its continuation pending appeal will do no harm to the defendants.

Public Interest

Preserving the status quo would not be contrary to public interest. The public is interested in a fair and safe prison system which uses lawful disciplinary procedures to maintain internal order. Maintaining the status quo until this matter is finally resolved is in accord with this goal. The public has benefitted over the past 26 years under the present regime, and will be well-served by preserving the present program until its dissolution can be considered by the Court of Appeals.

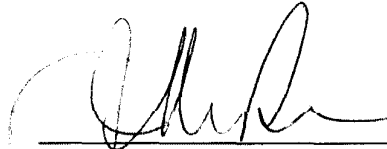
Accordingly, IT IS ORDERED that:

1. Plaintiffs' motion for an injunction pending appeal [Docket no. 228] is granted; and

2. Defendants are hereby enjoined from acting in derogation of the rights and procedures provided to the plaintiff class under

the consent decree pending appeal of this Court's Order of April 7,
1999.

Dated: July 15th, 1999



JAMES M. ROSENBAUM
United States District Judge