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Shapley v. O'Callaghan



PC-NV-005-001

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9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF NEVADA

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13 BILLY SHAPLEY, et al.,) CIVIL NO. CV-R-77-0221-ECR
14 Plaintiffs,)
15 vs.) STIPULATED PARTIAL
16 MICHAEL O'CALLAGHAN, et al.,) SETTLEMENT AGREEMENT
17 Defendants.)

18 The plaintiffs, having filed for themselves and all
19 those similarly situated a complaint alleging violations of the
20 First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the
21 United States Constitution as well as state pendent claims of
22 a constitutional and statutory nature, and the defendants
23 denying such allegations, the parties herein waive hearing and
24 entry of findings of fact and conclusions of law, and agree to
25 the submission of this Stipulated Partial Settlement Agreement
26 to the Court for its review and approval, without admission

27 * * *
28 * * *

1 by the defendants, or any of them, of any federal or state
2 statutory or constitutional violation,

3 NOW, THEREFORE, IT IS HEREBY AGREED by and between the
4 parties as follows:

5 1. This agreement is entered into as a settlement
6 of an existing dispute between the plaintiffs, individually and
7 for all those similarly situated as defined, below, and the
8 defendants as to the appropriate policies, procedures and
9 practices necessary to operate the Nevada State Prison in a
10 manner which will satisfy state and federal statutory and
11 constitutional standards. The agreement also provides for
12 specific, definable and good faith efforts to be made by the
13 defendants to achieve certain goals for implementing and
14 enforcing these standards, within specified periods of time.
15 This agreement satisfies and resolves a number of the claims
16 of the class of plaintiffs, as defined herein.

17 2. The class of plaintiffs shall seek no further
18 relief for the acts, practices or omissions alleged in the
19 complaint in regard to those issues upon which agreement has
20 been reached save and except to enforce the provisions of this
21 agreement, thereby waiving the right for further relief.

22 Correspondingly, the defendants waive any
23 defenses to the enforcement or implementation of this agree-
24 ment, save and except whether and to what extent they have met
25 the terms and conditions provided for herein.

26 The plaintiffs, individually and for the class
27 they represent, as defined herein, acknowledge that this agree-
28 ment is fully binding individually and on the class they

1 represent. The defendants similarly acknowledge that this
2 agreement is fully binding on each of them, each of their
3 officers, agents, employees and successors, and on all other
4 persons acting in concert with them who have notice of this
5 decree.

6 3. The plaintiffs brought this suit as a class
7 action seeking to represent members of the class for purposes
8 of securing injunctive and declaratory relief, as well as the
9 recovery of compensatory and punitive damages. For purposes
10 of this agreement, the class shall be those persons which the
11 Court has previously identified and certified as members of the
12 class pursuant to its order dated August 10, 1982, consistent
13 with Rule 23, F.R.C.P.

14 4. The defendants agree as a matter of policy not
15 to engage in any act or practice which has the purpose or effect
16 of managing or causing the operation of the Nevada State Prison
17 in a manner inconsistent with the terms of this agreement.
18 Further, the defendants will institute a program of action to
19 insure that the Nevada State Prison will operate in a manner
20 consistent with the terms of this agreement and the Constitution
21 and laws of the State of Nevada and of the United States. How-
22 ever, this agreement in no way constitutes an adjudication or
23 finding of any present or past unlawful practice by the defend-
24 ants, it being fully understood that the defendants unequivocally
25 deny that any such acts or practices exist or have occurred.

26 5. In the event any provision of this agreement
27 causes a result unintended by the parties or an ambiguous
28 interpretation, the abused party shall notify the other parties

1 by mail of the unintended result or ambiguous interpretation.
2 The parties shall have thirty (30) days thereafter to resolve
3 the problem. If the parties are unable to reach agreement
4 within thirty (30) days the issue may be submitted to the Court
5 for resolution.

6 In the event any provision of this agreement is
7 held unlawful by a court of competent jurisdiction, all other
8 provisions of this agreement shall remain in effect and only
9 the rights and/or obligations established in the voided portion
10 shall be extinguished.

11 6. This agreement shall continue for a period of
12 two (2) years from the date of approval by the Court. During
13 the effective period of this agreement, the Court shall continue
14 jurisdiction for the purpose of effectuating and enforcing the
15 provisions herein. Jurisdiction shall terminate upon filing
16 of an order of dismissal with prejudice by defendants, unless
17 the plaintiffs or defendants show good cause upon motion filed
18 prior to termination why the agreement should be modified or
19 the Court's jurisdiction continued.

20 8. The parties agree to retain an independent
21 auditor, who shall be a person acceptable to both parties, to
22 observe and report upon compliance with the terms of this
23 agreement. The expenses of such observation and reporting
24 will be borne by the defendants. In the course of carrying
25 out the above-described duties, the auditor shall:

26 (a) have unobstructed access to staff, inmates
27 or other knowledgeable persons for interviews or written
28 communication regarding conditions within the institution.

1 Such interviews or other communication may be held in private,
2 and may be held in confidence by the auditor;

3 (b) have complete and unobstructed access,
4 within the legitimate requirements of security, to all files,
5 records, reports, memoranda, or other documents within the
6 custody of the defendants for purposes of compliance with the
7 terms of this agreement;

8 (c) have the authority to retain experts to
9 assist in evaluations in technical areas when such assistance
10 becomes necessary to adequately assess compliance;

11 (d) have unobstructed access, within legitimate
12 requirements of security, to tour and inspect the institution,
13 including authority to conduct unannounced visits for purposes
14 of inspection;

15 (e) not be subject to dismissal except upon
16 agreement of both parties, or by the Court upon motion of one
17 of the parties and showing of good cause;

18 (f) prepare reports summarizing findings and
19 evaluations at least semi-annually, and provide copies of such
20 reports to counsel for both parties, and to the Court.

21 Counsel for plaintiffs will be provided with
22 notice of all communications between the auditor and the defend-
23 ants, and will be provided notice of and unfettered access to
24 all materials required by and/or delivered to the auditor by
25 the defendants.

26 8. The defendants agree to act immediately to comply
27 fully with the Consent Decree entered in the case of Craig v.
28 Hocker, CV-R-2662-BRT, entered by this Court on July 18, 1980.

1 9. The parties acknowledge and agree that the pro-
2 visions of this partial stipulated agreement apply to the areas
3 of
4 and . Those detailed agreements are
5 attached hereto as appendices and are incorporated herein as a
6 part of the settlement agreement.

7 With respect to those remaining issues, as yet un-
8 resolved, the defendants agree that they shall have ninety
9 (90) days from the date of this agreement to provide the plain-
10 tiffs with the defendants' final proposal for resolution of
11 those remaining issues. The plaintiffs shall thereafter have
12 thirty (30) days to review, meet and confer with the defendants
13 to reach final settlement as to these issues. After this
14 period, if final and complete resolution cannot be reached,
15 either party may apply to the Court within fifteen (15) days
16 thereafter for a trial date on those matters which the parties
17 are unable to finally and completely resolve.

18 DATED this _____ day of _____, 1983.

19 WASHOE LEGAL SERVICES

BRIAN MCKAY, ATTORNEY GENERAL

20 By _____
21 CHARLES R. ZEH, ESQ.

By _____
ERNEST E. ADLER, ESQ.

22 NATIONAL PRISON PROJECT

Counsel for Defendants.

23 By Claudia Wright
24 CLAUDIA WRIGHT, ESQ.

25 Counsel for Plaintiffs